IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2072 OF 2022

Aakanksha Arindam Banerjee ..Applicant

v/s.

The State of Maharashtra . ..Respondents

Mr. Ramesh Dube Patil a/w. Ms. Lisa Das i/b. Jay & Co. for the Applicant.
Mr. S.V.Gavand, APP for the State.
Mr. S.R.Gaud a/w. Shikhani Shah and Usman Memon for Intervenor.

CORAM : ANUJA PRABHUDESSAI , J.
DATED : 7th AUGUST, 2023.

P.C.

1. The applicant seeks pre-arrest bail in Crime No. 51 of 2023 registered at Oshiwara Police Station for offences under Section 419, 420 r/w. 34 of the Indian Penal Code.

2. The applicant was granted interim bail in view of the statement made in her affidavit that she would repay the amount of Rs.35,50,000/- as per the schedule mentioned in the affidavit. Since the applicant failed to make the payment, the interim bail was vacated and the matter was heard on merit.

3. Heard learned Counsel for the Applicant, learned APP for the

State, and learned Counsel for the Intervenor. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

4. The aforesaid crime was registered pursuant to the FIR lodged by Santosh Chandrakant Sonawane. The facts narrated in the FIR prima facie reveal that the complainant was interested in purchasing a room. He was informed that the co-accused Arindham Banerjee, the husband of the applicant was interested in selling room No. A-104, situated on the first floor of Shivam Tower, Adarsh Co-operative Housing Society, Oshiwara, Jogeshwari (W), Mumbai. The first informant contacted the applicant and her husband and agreed to purchase the room for sale price of Rs.1 Crore. The applicant and her husband informed the first informant that the room was being sold at a lower price due to urgent financial need.

5. On 15.07.2018 the first informant paid to the husband of the applicant an amount of Rs.25 lakhs . Since the first informant did not have the balance amount of Rs.75 lakhs, he sold his room no. 2008, C Wing, 20th Floor, Dheeraj Dreams CHS, Bhandup, and deposited Rs.25 lakhs in the account of husband of the applicant, Rs.25 lakhs in the account of Akanksha Multimedia Pvt. Ltd., and Rs.25 lakhs in the account of Trupti Vardhan Enterprises. The complainant thus paid total amount of Rs.1 Crore, being the sale consideration of the said room. Subsequently, the husband of the applicant demanded additional amount of Rs.10,38,000/- towards other miscellaneous expenses. The said amount was transferred into the account of the husband of the applicant from January 2019 to March 2019. The applicant and her husband thereafter refused to execute the sale deed in favour of the first informant and issued five cheques. The husband of the applicant also acknowledged having received amount of Rs.1 Crore from the first informant, and assured to repay Rs.25 lakhs by 20.01.2020 and the amount of Rs.75 lakhs by 20.03.2020. The husband of the applicant thereafter transferred an amount of Rs.1,38,000/- into the account of the first informant. Between June to March 2020, the husband of the applicant issued five cheques for Rs.10,38,000/-. The cheques issued in the month of September 2019, as well as the cheques issued in January 2020 have been dishonoured. Having realized that he was induced in making payment under the pretext of sale of house, the first informant lodged the FIR, pursuant to which the crime came to be registered for the offences stated above.

6. The first information report prima facie reveals that the applicant was also involved in discussion regarding the sale of the house. The first informant had paid part of the amount to the husband of the applicant, and deposited Rs.50 lakhs in the account of Akanksha

Multimedia Pvt. Ltd., and Trupti Vardhan Enterprises. The applicant is one of the Directors of Akanksha Multimedia Pvt. Ltd., and the sole proprietor of M/s. Trupti Vardhan Enterprises. It is on record that from the amount of Rs.50 lakhs which was deposited in the account of Akanksha Multimedia Pvt. Ltd. and Trupti Vardhan Enterprises, an amount of Rs.35,50,000/- has been transferred in the personal account of the applicant herein. In such circumstances, the contention of the learned Counsel for the applicant that the amount was paid to the co-accused towards consultancy charges cannot be accepted. Furthermore, the records reveal that the husband of the applicant had already issued cheques towards repayment of money and had signed the acknowledgment letters. This fact also prima facie negates the contention of the applicant that the amount was paid towards consultancy fees to the applicant.

7. The material on record prima facie indicates that the first informant was induced to pay the sale consideration of Rs.1 Crore and additional amount of Rs.10,38,000/- under the pretext of sale of the room. The fact that the applicant and her husband had no intention of selling the room since inception, is prima facie evident from the fact that despite receiving the sale consideration and other miscellaneous expenditure the applicant and her husband refused to transfer the title and put the first informant in possession of the subject room. The fact that the cheques issued in favour of the first informant have dishonoured also prima facie indicates that the applicant and her husband had no intention of returning the money.

8. Considering the above facts and circumstances, in my considered view, this is not a fit case to exercise discretion under Section 438 of Cr.P.C. Application is dismissed. Interim application stands disposed of, in view of dismissal of the Anticipatory Bail Application**.**

(ANUJA PRABHUDESSAI, J.)