IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2219 OF 2023

Kiran Rajesh Bhatia ..Applicant

v/s.

The State of Maharashtra . ..Respondents

Ms. Sonal Parab a/w. Ramesh Jain i/b. Rajeev Sawant for the Applicant.
Mr. S.V.Gavand, APP for the State.

CORAM : ANUJA PRABHUDESSAI,J.
DATED : 18th AUGUST, 2023.

P.C.

1. The applicant apprehends arrest in crime no. 427 of 2022 registered with Gamdevi Police Station, Mumbai, for the offences punishable under Section 420, 465, 467, 468, 471, 474 r/w. 34 of the Indian Penal Code.

2. The crime against the applicant and the other co-accused has been registered pursuant to the FIR lodged by Rohini Ravindra Avhad. The facts narrated in the FIR and the other material on record prima facie reveals that the applicant, who is a proprietor of M/s. Pinnacle Furnishing and Export, had availed loan of Rs.4 Crores from the Bank of Baroda. One Asha Chowkekar was offered as Guarantor for repayment of the loan., and she mortgaged flat No. A-501 situated at Greenfield CHS, Thakur Complex, Kandivali (East), towards security of the loan amount.

3. The records reveal that Asha Chowkekar had expired on 21.01.2010 i.e. prior to availment of loan. The records also reveal that by a registered agreement for sale dated 25.5.2011, the son of Asha Chowkekar had already sold the flat to one Surendra Sharma. Said Surendra Sharma had also taken loan of Rs.50 lakhs from the co-operative society by mortgaging the said flat. He defaulted in repaying the loan and as a consequence the flat was auctioned, and the same was purchased by the first informant.

4. The applicant had also failed to repay the loan availed from the Bank of Baroda. Hence, the bank initiated recovery proceedings and obtained symbolic possession of the said flat, which was purchased by the first informant in the auction held under the provisions of the Maharashtra Co-operative Societies Act. This led to registration of the FIR.

5. Ms. Sonal Parab, learned Counsel for the Applicant submits that the applicant and her husband were in need of finances for expanding their business. She contends that the co-accused Prajapati and Yogeshwar had introduced the Applicant to one Asha Chowkekar, and informed her that said Asha Chowkekar was in need of money to meet medical expenses and that she was willing to offer her immovable properties as collateral security.

She submits that relying upon the said representation, the applicant entered into an agreement with a lady who was identified by the co-accused as Asha Chowkekar. She submits that the applicant herself is a victim of the crime.

6. Per contra, Mr. Gavand, learned APP submits that the averments in the application as well as the agreement dated 27.05.2012 clearly indicate that the applicant had paid money to an imposter to offer herself as a guarantor. He submits that the applicant had availed loan of Rs. 4 Crores from the Bank of Baroda on the basis of fake and fabricated documents.

7. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties.

8. It is not in dispute that Asha Chowkekar had expired on 21.01.2010 i.e. much prior to the availment of loan by the applicant. A perusal of the grounds raised in the application reveal that said Asha Chowkekar was not known to the applicant. The applicant had entered into an agreement dated 27.05.2012 with the imposter and had paid to her an amount of Rs.11 lakhs to stand as a guarantor. The applicant had not offered her property as collateral security, but had mortgaged the flat of Asha Chowkekar, which was already sold to Surendra Sharma. The lady impersonating Asha

Chowkekar had also signed hypothecation agreement dated 23.5.2012 and letter dated 10.08.2013 for renewal of credit facility. It is on the basis of these fabricated documents, the applicant availed cash credit facility of Rs.4 Crores. It is also pertinent to note that the son of said Asha Chowkekar, who was a witness to the agreement dated 27.05.2012 had already sold the flat to one Surendra Sharma by registered sale agreement dated 25.05.2011. Thus, as on the date of the application for loan and execution of guarantee agreement Asha Chowkekar was neither alive nor was she the owner of the flat.

9. The records reveal that the son of Asha Chowkekar had filed writ petition as well as civil proceedings challenging the agreement for sale and the proceedings initiated by the bank. The applicant herein was a party to the said proceedings. The applicant was thus well aware that Asha Chowkekar had expired much before she had applied for the loan. The applicant, who claims to have been cheated by the co-accused Prajapati and Yogeshwar had not lodged any complaint against them or against the son of Asha Chowkekar. It is only on 11.01.2023, that the applicant lodged the complaint, wherein she played the victim card and blamed the co-accused for her actions. The said complaint is only an attempt to raise a defence which is prima facie not probable.

10. The records prima facie indicate that the applicant has cheated the bank by availing loan of Rs.4 Crores on the basis of fake and fabricated documents, and by offering a fake guarantor. The applicant who is a beneficiary of this fraudulent transaction cannot prima facie be considered as a victim of crime. The manner in which loan is taken is certainly a part of larger conspiracy between the applicant and the other co-accused. Such conspiracy involving loss of public fund needs to be viewed seriously. Considering the above facts and circumstances, I am not inclined to exercise discretion under Section 438 Cr.P.C. in favour of the applicant. Hence, Application is dismissed

(ANUJA PRABHUDESSAI, J.)