2023:BHC-AS:27112

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2514 OF 2023

Keshavji Damji Minnat and Ors.	...	Applicants
versus		
State of Maharashtra	...	Respondent

WITH
INTERIM APPLICATION NO.3328 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2514 OF 2023

Hemant Pandurang Bhide	...	Applicants
and		
Keshavji Damji Minnat and Ors.	...	Applicants
versus		
State of Maharashtra	...	Respondent

Mr. Omkar Kulkarni i/by Mr. Abhishek Gokhale, for Applicants
Mr. S.V.Gavand, APP for State
Mr. Sanil D. Dalvi with Mr Sagar Redkar, Mr. Narendra L. Kalpoth, for Intervener.
Mr.Ajit Patil, API Navghar Police Station, present.

CORAM: N.J.JAMADAR, J.
DATE : 12 SEPTEMBER 2023

P.C.

1. Heard the learned Counsel for the parties.

2. This is an application for pre-arrest bail in connection with C.R.No.118 of 2023 registered with Navghar Police Station for an offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

3. The gravamen of indictment against the Applicants is that the Applicants had borrowed a huge amount from the first informant by making a false representation of the payment of interest @ 18% p.a. on the said amount. The

applicants committed default in repayment of the said loan as well as interest thereon. When the first informant insisted for repayment of the amount, the applicants offered to sell the flat in a project at Anuthem Park at Mulund (E), in lieu of the said amount. Agreements for sale were executed and registered in respect of Flat Nos.C-1703 and C-1904. Subsequently, the applicants issued notices to the first informant alleging that on account of non-payment of the balance consideration, they would terminate the said agreements for sale.

4. It is the allegation of the first informant that, apart from the amount of consideration which is shown in the agreements, the applicants owed a sum of Rs.2,70,17,706/- in respect of the transaction evidenced by the Agreement dated 31 October 2019 and a sum of Rs.1,56,68,026/- in respect of the transaction evidenced by the agreement dated 30 March 2021. When the first informant was served with the termination notices, the first informant realized that the applicants had defrauded him to the tune of Rs.7.40 Crores. Hence, the Report.

5. The learned Counsel for the applicants submitted that the applicants had given notice of termination of the registered agreements as the first informant committed default in payment of the balance consideration and the applicants have also instituted a suit seeking a declaration that the agreements have been lawfully terminated. Attention of the Court was invited to clause 13 of the Agreements dated 31 October 2019 and 30 March 2021 which record the amount of consideration already

paid by the purchaser and the balance consideration to be paid.

6. The learned APP submitted that the subsequent termination of the agreements shows the dishonest intention on the part of the Applicants.

7. The learned Counsel for the first informant also submitted that the applicants have accepted huge amount from the first informant by making a false representation of paying interest @ 18% p.a. The registered agreements does not represent the true transaction between the parties and the termination of the registered agreements indicates that the applicants had dishonest intention since the inception of the transaction.

8. Prima facie, I find it difficult to accede to these submissions. It appears that initially the nature of the transaction between the parties was that of a loan. However, the parties subsequently entered into registered agreements to sell and purchase the flats and the amount which were already paid by the first informant to the applicants were adjusted towards part consideration. Prima facie, a case of novation of contract is made out. Thus, the existence of a transaction, other than the one which the registered agreements evidence, would be a matter for adjudication.

9. In any event, the alleged offence of cheating revolves around documents. It entails punishment which may extend to seven years. The Applicants appear to have roots in society. I am, therefore, inclined to exercise the discretion in favour of the Applicants.

10. Hence, the following order :

ORDER

(i) In the event of the arrest of the Applicants – Keshavji Damji Minnat, Premji Velji Patel, Jeram Jetha Gami and Govind Jetha Gami in connection with C.R.No.118 of 2023 registered with Navghar Police Station, the Applicants be released on bail on furnishing a PR bond in the sum of Rs.30,000/- each with one or two sureties in the like amount.

(ii) The Applicants shall co-operate with the investigation and report to Navghar Police Station on every alternate Sunday from 10.00 a.m. to 1.00 p.m. for a period of one month.

(iii) The Applicants shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses and the persons acquainted with the facts of the case.

(iv) The Applicants shall produce the original documents, which are in their custody, if directed by the Investigating Officer.

(v) The Application stands disposed.

(vi) Interim Application No.3328 of 2023 also stands disposed.

(vii) It is clarified that these prima facie observations are confined to determine the entitlement to pre-arrest bail only.

(N.J.JAMADAR, J.)