IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2955 OF 2022

Nitin @ Anna Digambar Dhotre ...Applicant
vs.
The State of Maharashtra and Others ...Respondents

Mr. Aniket Nikam i/b. Mr. Amit Ichan, for the Applicant.
Mr. R.M. Pethe, APP for the State.
Mr. Aseem Naphade a/w. Mr. Ambikaprasad Singh, for the Respondent No. 2.

CORAM : N. J. JAMADAR, J.
DATE : SEPTEMBER 14, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 508 of 2022 registered at Hinjwadi police station for the offences punishable under sections 120-B, 406, 419, 420, 467, 468, 471, 506 and 403 of Indian penal Code, 1860.

3. The first informant works as a sweeper in a factory at Mulshi. Accused No. 1 Sonali Jadhav was introduced as an investment adviser to the first informant by his father in law. Initially accused No. 1 Sonali and accused No. 3 Sangita Nagarkar induced the first informant and his family members to part with a sum of Rs. 6 lakhs

by making a representation that if invested the said amount would grow to Rs. 25 lakhs in 3 months. Later on, by making an offer of refund of Rs. 25 lakhs laced with a further inducement that, if re-invested, the said amount would grow to Rs. 80 lakhs under six months. The accused Nos. 1 and 2 gained the confidence of the first informant and his family members. Thereafter, according to the first informant, accused No. 1 Sonal Jadhav made the first informant and his family members to part with various amounts on one or the other pretext. As the first informant and his family members reposed confidence in Sonali accused No. 1 and her associates, they further induced the first informant and his family members to believe that they had invested an amount of Rs. 25 lakhs in a company which was to procure a precious metal which would fetch Rs. 5000 Crores. False certificates purported to be issued by Bhabha Atomic Research Center and RBI and bearing the seals of Government of India and RBI was shown to the first informant and his brothers Rajesh Sasar and Prakash Sasar.

4. Sonali Jadhav further represented that to get Rs. 500 Crores it was necessary to pay tax and fees for conversation of foreign currency and for that Rs. 35 to 40 lakhs were required. The first informant and his family members were allegedly forced and

induced to raise the money by sale or mortgage of their agriculture land situated at Mauje Savargaon, Tal. Mulshi. Here, the applicant comes in the frame.

5. The first informant alleges Sonia Jadhav made the first informant and his family members to approach the applicant through alleged estate agents. Initially it was agreed that the applicant would pay Rs. 40 lakhs upon execution of mortgage of the agriculture land. Later on, the applicant allegedly insisted that the agriculture land be sold to him and that he would not advance money on mortgage. Thus, the first informant and his brothers were coerced to execute the Sale Deed on 15th January, 2020 in respect of the said agriculture land which was purchased in the year 2012 for a consideration of Rs. 1,29,00,000/- for a grossly inadequate consideration.

6. As it happens, the co-accused allegedly extracted more amount from the first informant and his family members on one or the other pretext and, eventually, with the outbreak of Covid 19 pandemic declined to pay the amount, as promised. Realizing the fraud the first informant lodged report on 2nd June, 2022.

7. As the learned Additional Session Judge declined to exercise the discretion, the applicant has approached this Court when the matter was listed before this Court on 19th October, 2022, this Court was persuaded to grant interim protection in view of the submission that the only role attributed to the applicant was that of purchase of land for consideration below the market value of the land.

8. Mr. Nikam, learned counsel for the applicant submitted that till date that remains the only accusation against the applicant. It is not the case of the prosecution that the applicant ever made any representation to the first informant to invest the amount or was otherwise a privy to the alleged offence. Apart from the role of having purchased the agriculture land at a grossly inadequate consideration, there is no other incriminating material against the applicant. Moreover, such grievance was made by the first informant after about two and half years of the execution of the registered Sale Deed. Therefore, the applicant deserves the exercise of discretion.

9. Mr. Pethe, learned APP submitted that though the acquisition of the property at a grossly inadequate consideration is the prime material against the applicant yet, in the totality of the

circumstances, the applicant appears to be confederate in the larger conspiracy to dupe the first informant. It was further submitted that the antecedents of the applicant indicate that he is a history sheeter. As many as 18 crimes have been registered against the applicant and, therefore, the applicant does not deserve pre-arrest bail.

10. Mr. Naphade, learned counsel for the first informant taking the Court through the valuation of the agriculture land in the year 2012 i.e. Rs. 1,29,00,000/- and the consideration paid for the acquisition thereof by the applicant in the year 2012 strenuously urged that it is inconceivable that after more than 8 years the first informant would sale the land for a paltry consideration of Rs. 40 lakhs. This factor singularly demonstrates the fraudulent nature of the transaction and the involvement of the applicant in the alleged offences.

11. I am afraid to accede to the submission on behalf of Mr. Pethe, learned APP, and Mr. Naphade. In the first information report apart from the role of acquiring the agriculture land at a throw away price, there is no whisper about the involvement of the applicant in either making a false representation or giving inducement to first

informant and his relatives to part with any amount. Even with regard to core of accusation against the applicant, the first informant alleges that when the applicant refused to advance money upon mortgage of the agriculture land and insisted for sale thereof, the first informant and his family members and other accused decided to complete the transaction as there was no other alternative for raising the money. The legality and validity of the transaction and the instrument, in fact, not representing the real transaction between the alleged vendors and the applicant, can be agitated and adjudicated in an appropriate proceeding. However, it is the element of criminality in the said transaction which is required to be considered at this stage.

12. Prima facie, apart from the said allegation, there is no material to show that the applicant was privy to the crime either before the said transaction or thereafter. It is true during the period 2003 to 2013 as many as 18 crimes appear to have been registered against the applicant for various offences against the property and bodily offences. However, that cannot be the overriding consideration where the material on record prima facie does not indicate the complicity of the applicant for the offence of cheating and forgery. The co-accused might have made the first informant to

approach the applicant, being a rouge element, to raise money by selling their land and thereafter defraud the first informant and his family members of the said amount. Sensing the opportunity the applicant can be accused of acquiring the agriculture land at a grossly inadequate consideration. Yet, the role attributed to the applicant, even if taken at par, does not seem to be prima facie sufficient to implicate him for the offences of cheating and forgery. Thus, custodial interrogation of the applicant does not seem to be warranted.

13. In any event, the applicant has been on interim protection since 19th October, 2022. Even at this length of time, it does not appear that any further material has been collected during the course of investigation to show the prima facie complicity of the applicant for the offences of chearing and forgery. I am, therefore, persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] Application allowed.

2] In the event of arrest in C.R. No.508 of 2022 registered with Hinjwadi police station, the applicant Nitin @ Anna Digambar Dhotre be released on bail on furnishing a P.R. bond in the sum of Rs. 30,000/- with one or two sureties in the like amount.

3] The applicant shall cooperate with the investigation and attend Hinjwadi police station, on every Saturday in between 10 am to 1 pm for two months.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or persons acquainted with the facts of the case.

5] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)