VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3087 OF 2022

Chaitanya Rajaram Kalbag … Applicant
V/s.
The State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.541 OF 2023

Lakhamashi Kanjibhai Patel … Applicant
In the matter between
Chaitanya Rajaram Kalbag ... Applicant
V/s.
The State of Maharashtra … Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.3088 OF 2022

Madhushree Chaitanya Kalbag … Applicant
V/s.
The State of Maharashtra … Respondent

Mr. Saurabh Ghag with ms. Divya Bhata i/by Mr. Tejas Mane for the applicant in ABA/3087/2022 & ABA/3088/2022.

Mr. Nilesh Navale for the applicant in IA/541/2023.

Ms. Veera Shinde, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 19, 2023

P.C.:

1. The applicants are husband and wife, apprehending arrest in connection with C.R. No.712 of 2022, registered with Wakad Police Station for offences punishable under sections 120-B, 406, 420 and section 34 of the Indian Penal Code, 1860.

2. According to prosecution, the first informant's son sold their property situated in Mumbai for consideration of Rs.86,00,000/-. One Suhas Mamdapurkar arranged meeting of informant's son with accused No.1 who showed interest in providing financial help to him. According to the prosecution, accused Nos.1 and 2 promised loan of Rs.2,00,00,000/- on the condition that he will mortgage his flat. Loan of 50% would be repaid by the son and 50% would be repaid by the accused No.1. The accused Nos.1 and 2 also promised financial help to the son for procuring stamp duty. The informant's son was not eligible for the loan from bank. On 24th April 2018, accused No.2 executed the declaration stating that she had paid amount of Rs.14,00,000/-. For repayment of the amount of loan the informant's son expressed things desire to sell their property.

3. On 30th June 2019, registered document of sale was executed in favour of accused No.3. Instead of paying consideration amount to informant's son, accused Nos.1 and 2 got consideration transferred the amount in their account. For payment of informant's son's share of Rs.1,86,00,000/-, accused No.2 issued two cheques of Rs.25,00,000/- and Rs.75,00,000/-, which were dishonoured. The accused agreed to repay balance amount of Rs.85,00,000/- which they failed to pay. Hence, according to complainant, all the accused persons have cheated the informant's son and informant as they had dishonest intention at the inception of transaction.

4. The applicants filed application under section 438 of the Criminal Procedure Code, 1973, which is rejected by the Sessions Court, therefore, present anticipatory bail applications.

5. I have considered the documents and material on record. On perusal of the registered sale deed, it appears that the informant's son and applicant No.2 are the vendors. Clause (2) of the sale deed contains following clause:

> **2)**……….
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> "The TRANSFEROR hereby admit and acknowledge to have received the said sum of ***RS. 2,20,00,000/- (RUPEES TWO CRORE TWENTY LAKH ONLY)*** being Full and Final Payment and the TRANSFEROR shall acquit, release and discharge every part thereof to the TRANSFEREE forever as mentioned hereinabove."

6. There is independent receipt signed by the informant's son acknowledging receipt of amount of Rs.2,20,00,000/-. Since, the registered document contains a recital of receipt of amount and also contains an independent receipt, at this stage, prima facie case against the applicant is not made out. During the course of investigation, it will be open for the investigating agency to ascertain whether in fact the cheques mentioned in the receipt were honoured or not, and whether the informant's son got the amount if his share of sale consideration. However, to ascertain this, custodial interrogation of the applicants is not required. Hence, following order:

a) In the event of arrest of the applicants in connection with C.R. No.712 of 2022, registered with Wakad Police Station for offences punishable under sections 120-B, 406, 420 and section 34 of the Indian Penal Code, 1860, they shall be released on interim bail on furnishing PR Bond in the sum of Rs.1,00,000/- each along with one or two sureties in the like amount;

b) The applicants shall remain present before the investigating officer on 21st, 23rd and 26th June 2023 between 11:00 a.m. to 02:00 p.m. and, thereafter, as and when called by the investigating officer;

c) The applicants shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

d) The applicants shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

e) The applicants shall, at the time of execution of the bond, furnish their address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case.

7. The anticipatory bail applications are disposed of in above terms.

8. In view of disposal of the anticipatory bail applications, nothing remains to be adjudicated in the interim application. The same stands disposed of.

(AMIT BORKAR, J.)