IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2831 OF 2023

Jyotirmaya Surendranath Gupta and Others ...Applicants

Vs.

The State of Maharashtra and Others ...Respondent

Mr. Bhagwan Mishra, for Applicants.
Mrs. A. A. Takalkar, APP for State.
Mr. Rajendra Kumbhar, I.O, and Mr. Sunil Sonawane, PSI, Charkop Police Station, present.

CORAM:- N. J. JAMADAR, J.
DATED:- 10th OCTOBER, 2023

PC:-

1) Heard the learned counsel for the applicants and the learned APP for the State.

2) This is an application for pre-arrest bail in connection with C.R. No. 1032 of 2022, registered with Charkop police station, for the offences punishable under Sections 420 and 406 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

3) The first informant was in need of a premises. Accused No. 1 - Javed Khan represented to her that a flat at Charkop Kandivali, allotted to Surendranath Gupta, the father of applicant No. 1 – Jyotirmaya Gupta and father-in-law of applicant No. 2 – Geeta Gupta, was available for sale. The first informant was represented that Surendranath was in immediate need of funds as he had suffered a paralytic attack. Surendranath and applicant No. 1 made the first informant to enter into a notarized agreement on the assurance that after five years of the allotment of the said flat by MHADA to Surendranath, the transfer would be effected. The first informant, thus, parted with a consideration of Rs.30,00,000/- in cash and through bank transfers. The first informant was put in possession of the said flat in the year 2014.

4) In the year 2019, the Karnataka Bank attached the said flat to recover the loan, which was availed by Mr. Surendranath and applicant No. 2. The fact that the said flat was mortgaged to Karnataka Bank was not disclosed to the first informant. In order to protect her possession, the applicants allegedly coerced the first informant to deposit a sum of Rs.5,57,000/- with the Registrar DRT. Eventually, the Bank sold the said flat in an auction under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Having realised the fraud, the first informant lodged the report.

5) The learned Counsel for the applicant submitted that the transaction was between the father of the applicant No. 1 - Jyotirmaya and the first informant. Money was credited to the account of Surendranath. The applicants have been falsely roped in for being the son and daughter-in-law of the said Surendranath. It was further submitted that the applicant No. 1 has given no objection to withdraw the amount of Rs.14,97,916.42/-, (balance sale proceeds). Therefore, at this stage, the custodial interrogation of the applicants is not warranted.

6) The learned APP, on the contrary, submitted that the applicant Nos. 1 and 2 were the real beneficiaries of the fraud. Surendranath had suffered a stroke and was bedridden. The entire transaction was executed by the applicants. There is material to show that the amount credited to the account of Surendranath has been withdrawn by Jyotirmaya, and applicant

No. 2 – Geeta has also passed a receipt in acknowledgement of the cash amounts of Rs.5,00,000/- and Rs.1,50,000/-. Therefore, the applicants cannot be permitted to wriggle out of the situation by asserting that the transaction was between the first informant and Surendranath.

7) The learned Counsel for the first informant also resisted the prayer for pre-arrest bail.

8) A mere failure to perform the contract is not, in itself, cheating. In the case at hand, the material on record indicates that the first informant was induced to part with huge amount suppressing the fact that the said flat was mortgaged. Eventually, the secured creditor realised the recovered the loan by selling the secured assets and the first informant was dishoused.

9) In the backdrop of these facts, the question of the complicity of the applicants deserves consideration. First and foremost, whether the applicants were the beneficiaries of the alleged fraud. The statement of account of Surendranath maintained with Karnataka Bank indicates that the first informant had credited an amount of Rs.8,50,000/- on 23rd October, 2013. Applicant No. 1 Jyotirmaya withdrew an amount of Rs.6,20,000/- within a fortnight and a further amount of Rs.1,35,000/- was withdrawn by the account holder.

10) Secondly, there is a document to show that applicant No. 2 – Geeta has passed a receipt in acknowledgement of Rs.5,00,000/- on behalf of Surendranath and Jyotirmaya on 30th May, 2014. There is another endorsement, which acknowledges the receipt of Rs.1,50,000/- on 7th June, 2014.

11) Had the matter of been only of being recipients of the consideration, a different view could have been taken. The material, however, indicates that the applicant No. 1 – Jyotirmaya was privy to the deception. The communication from Karnataka Bank indicates that Surendranath had availed a housing loan jointly with the applicant No. 1 Jyotirmaya by creating an equitable mortgage of the said flat. Prima facie, there is material to indicate that applicant No. 1 Jyotirmaya despite having executed an equitable mortgage made the first informant to part with a huge amount, put her in possession of the flat and utilised sale proceeds.

12) In the face of the aforesaid material, the submission on behalf of the applicants that the first informant can withdraw the balance amount of sale proceeds is of no solace to the first informant. Prima facie, the applicants defrauded the first informant and she was divested of the possession of the flat as well as money.

13) In this view of the matter, though the offence under Section 420 of the Penal Code entails punishment, which may extend to 7 years, custodial interrogation of the applicants seems necessary. It is not a case where the Court can exercise the discretion in favour of the applicants without jeopardising the interest of fair and effective investigation, and the first informant.

14) Thus the application deserves to be rejected.

15) Hence, the following order:-

ORDER

I) The application stands rejected.

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

[N. J. JAMADAR, J.]