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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.3365 OF 2022

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Mansi Milind Chiplunkar ... Applicant

V/s.

The State of Maharashtra ... Respondent

WITH

INTERIM APPLICATION NO.4240 OF 2022

IN

ANTICIPATORY BAIL APPLICATION NO.3365 OF 2022

Priti Rajendra Chand ... Applicant

In the matter between

Mansi Milind Chiplunkar ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Aman Kacharia with Mr. Rahul Agarwal, Ms. Jasmin Purani i/by A and D. Legal LLP for the applicant in ABA/3365/2022.

Mr. Hrishikesh Mundargi i/by Ms. Swarali Joglekar for the applicant in IA/4240/2022.

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

CORAM : AMIT BORKAR, J.

DATED : JULY 4, 2023

PC.:

1. Apprehending arrest in connection with C.R. No.419 of 2019 registered with Juhu Police Station, Mumbai for offences punishable under Sections 417, 420, 448, 467, 468, 471, 341 read

with Section 34 of the Indian Penal Code, 1860, the applicant is seeking relief of pre-arrest protection under Section 438 of the Criminal Procedure Code, 1973.

2. One Priti Rajendra Chand filed a complaint against accused No.1, Kandadale Ramesh Rao alleging preparation of false and fabricated documents and sell of property to purchasers like applicant. According to prosecution, the part of Nalanda Shopping Center admeasuring 34,346 sq. ft.. The original owner allotted 11,100 sq. ft. of built up area to Aviation Travels Private Limited on 6 August 1982. According to prosecution, Aviation Travels Private Limited, without authority to execute sale deed, sold various premises in the shopping center to various persons including the applicant without any consideration. The applicant was initially not named in the report, however, role of applicant surfaced during investigation. The investigating agency, therefore, added names of the applicant and similarly situated persons in the charge-sheet as accused. According to prosecution, despite knowledge of defective title, the applicant mortgaged property in favour of the bank and obtained loan of Rs.14 crore.

3. The applicant, therefore, applied for relief of pre-arrest protection under Section 438 of the Criminal Procedure Code, 1973 before the learned Additional Sessions Judge, Dindoshi which came to be rejected by order dated 13 October 2022. The applicant, therefore, filed present anticipatory bail application.

4. According to applicant, disputes about title of Aviation and the applicant is pending before this Court in a civil suit. This Court

in a civil suit has prima facie observed that acceptance of mortgage by a bank indicates title of the applicant. According to him, in the year 1993 a document in the form of Memorandum of Understanding was executed conferring right on the applicant and in recognition of such Memorandum of Understanding, sale deed in the year 2017 has been executed. According to him, therefore, the applicant is bona fide purchaser of the property for value without notice and act of mortgaging such property to the bank is in exercise of his right as owner of the property.

5. Per contra, learned APP and learned advocate for the informant submitted that this Court has rejected anticipatory bail application of similarly situated purchasers. According to them, on the date of execution of mortgage the applicant was aware of the defective title. Despite such knowledge, amount of Rs.14 crore was obtained from the bank. The sale deed indicates market price of the property as above Rs.22 crores; however, the applicant has purchased the property for Rs.49,50,000/-. Neither public notice was issued nor search of title was taken. Therefore, the material on record indicates that the applicant in connivance with accused No.1 has committed offence as alleged.

6. On perusal of the material on record including charge-sheet, it prima facie appears that the sale deed executed in favour of the applicant is dated 11 December 2017. Market price of the property for stamp purposes is shown as Rs.22,47,02,000/-, however consideration shown as Rs.49,50,000/-. Only justification for reduction of price as reflected from sale deed is previous possession of the applicant over the property. Mere previous

possession is not sufficient to reduce market price of the property to such extent in absence of previous conferment of right in the property on the applicant. The fact of possession reflected from the document nowhere states that consideration amount is reduced taking into consideration previous right of the applicant.

7. Moreover, the vendor of applicant claims title based on letter of allotment which is unregistered document. In absence of registered document, a person is not entitled to claim right, title and interest over the immovable property. The observations of this Court in an interim order is relevant only for the purposes of grant of interim relief and it does not operate either as a precedent or having any binding nature while considering application under Section 438 of the Criminal Procedure Code, 1973. The prima facie finding is neither conclusive nor confers any right, title and interest on the applicant in absence of material on record to justify title of the previous vendor. The reduction in market price to such an extent from Rs.22.47 crore to Rs.49.50 lakh is sufficient to strip applicant on her status as bona fide purchaser for value without notice. If that be so, on the date of execution of sale deed and also on the date of execution of mortgage deed prima facie the applicant was aware of absence of title of Aviation. Therefore, prima facie case against the applicant exists.

8. Moreover, this Court while rejecting Anticipatory Bail Application No.2325 of 2021 considered similar situation and prima facie held that complicity and intention of the applicant in practicing fraud and committing forgery can prima facie be inferred which warrants custodial interrogation. The role

attributed to the applicant is similar to the role attributed to the applicant in Anticipatory Bail Application No.2325 of 2021.

9. Moreover, the Apex Court in the case of **Sumitha Pradeep v. Arun Kumar C.K. & Another** reported in 2022 SCC OnLine SC 1529 was considering grant of bail to an accused charged with an offence under Protection of Children from Sexual Offences Act, 2012. The Apex Court, in paragraph 16, observed as under:

“16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the *prima facie* case against the accused should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the *prima facie* case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to

grant anticipatory bail.”

10. In view of aforesaid factors, no case for exercise of power under Section 438 of the Criminal Procedure Code, 1973 is made out.

11. The anticipatory bail application, therefore, stands rejected. No costs.

12. In view of disposal of the anticipatory bail application, nothing survives in the interim application and the same stands disposed of accordingly.

(AMIT BORKAR, J.)