IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 18 OF 2024

Kaushal Ramsajeevan Upadhyay ..Applicant
Versus
The State of Maharashtra ..Respondent

Mr. Dushyantdev Upadhyay a/w. Sanjay Chaturvedi for Applicant.
Ms. Sharmila S. Kaushik, APP for State/Respondent.
Mr. Manish Singh a/w. Archana Tiwari a/w. Prajakta a/w. Aadnya Bhandari for complainant.

CORAM : SARANG V. KOTWAL, J.
DATE : 8 JANUARY 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.256 of 2023 registered at Kalachowki Police Station, on 20.10.2023, under sections 406 and 420 of the Indian Penal Code.

2. Heard Mr. Dushyantdev Upadhyay, learned counsel for the applicant, Mr. Manish Singh, learned counsel for the complainant and Ms. Sharmila Kaushik, learned APP for the State.

3. The F.I.R. is lodged by one Sandhya Tiwari, She was

niece of the present applicant. Her mother was the applicant's sister. The F.I.R. mentions that the applicant being younger brother of her mother; was staying in the informant's house. He was earning his livelihood by plying a taxi. After a few days, he got married. Even after that he stayed with the informant's family for a few days and then went back to reside at their native place in Uttar Pradesh. In the meantime, he used to visit the informant's house regularly. They had good relations.

4. In 2016, the informant's mother was diagnosed with brain cancer and she was in the last stage of her disease. Her mother's wish was to build a house at her native place and, therefore she requested the applicant to purchase a plot. In December 2016, the informant transferred Rs.7 lakhs to the applicant through RTGS. It is further mentioned in the F.I.R. that, between May 2017 to June 2017, the applicant visited their house and obtained the informant's mother's signature on a cheque, though, she was bedridden. He then withdrew Rs.1 lakhs on 14.06.2017. He also took Rs.33000/- from the informant's mother. The informant's mother passed away on 17.10.2018. After that,

the informant came to know that the applicant had purchased the land in his own name. The informant confronted the applicant. She demanded back her money failing which, asked him to give that piece of land. The applicant did neither and, therefore, this F.I.R. was lodged.

5. Learned counsel for the applicant submitted that, the F.I.R. itself mentioned that the applicant was plying a taxi. He submitted that, the daily earnings from plying the taxi were given to the applicant's elder sister i.e. the informant's mother. She kept it in her bank account and this money was saved on behalf of the applicant. When the informant's mother was diagnosed with a terminal disease, she herself wanted to return the money to the applicant and, therefore, that amount of Rs.7 lakhs was transferred to the applicant's account. He further submitted that, there are no allegations that the signature on the cheque for Rs.1 lakh was forged. He further submitted that the informant was aware of all these facts and, therefore, the F.I.R. was not lodged immediately, but it was lodged on 20.10.2023.

6. Learned APP, as well as, learned counsel appearing for the first informant opposed these submissions. Learned counsel for the informant submitted that, the taxi was actually purchased by the informant's father and it was given to the applicant only for plying. The earnings were actually of the informant's father. He further submitted that the applicant plied the taxi only for a few months and he could not have earned the amount of Rs.7 lakhs during that period. This shows that the amount was given specifically for purchase of a piece of land at their native place. The amount is misappropriated. Therefore, learned APP, as well as, learned counsel for the informant submitted that, custodial interrogation of the applicant is necessary.

7. I have considered these submissions. At this stage, there is a reasonable possibility that the applicant's contention may be true. A significant fact is that, once the informant's mother was diagnosed with a terminal disease, that too, in the last stage, the amount was returned. Therefore, it is more probable that it was returned as his own money. In any case, that would be the matter for trial. At this stage, no conclusive opinion can be recorded in

that behalf. But there is a possibility which cannot be denied. It favours the applicant. The F.I.R. is lodged in October 2023, though, since October 2018 the informant could have found out that the land was not purchased in the name of the informant's mother. The money was transferred in December 2016. From that point onwards also the informant could have made enquiries as to whether the land was purchased by the applicant. There is a considerable delay in lodging the F.I.R. After all these years, the custodial interrogation of the applicant will not serve any purpose. It would be sufficient if the applicant is directed to co-operate with the investigation. If he does not attend the concerned police station, the prosecuting agency is always at liberty to move an application for cancellation of relief granted to him.

8. Hence, the following order :

ORDER

i) In the event of his arrest in connection with C.R.No.256 of 2023 registered at Kalachowki Police Station, the applicant is directed to be released on bail on his executing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

ii) The Applicant shall attend the concerned Police Station from 22/01/2024 to 24/01/2024 between 1.00p.m. to 4.00p.m. and shall cooperate with the investigation. In addition, the applicant shall attend the concerned police station as and when called and shall cooperate with the investigation.

iii) If the applicant does not attend the concerned police station, the investigating agency has liberty to move an application for cancellation of this order.

iv) With this observation, the Application is disposed of.

(SARANG V. KOTWAL, J.)