IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 9 OF 2021

Mrs. Rachel Rajiv Kutty ..Applicant
Versus
The State of Maharashtra ..Respondent

WITH
INTERIM APPLICATION NO. 297 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 9 OF 2021

Mr. Mithilesh Mishra i/b. Yuvraj Patil for Applicant.
Ms. Mahalakshmi Ganapathy, APP for State/Respondent.
Mr. Tariq Khan for Intervenor in IA/297/2021.

CORAM : SARANG V. KOTWAL, J.
DATE : 27 MARCH 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.648 of 2019 registered at Powai Police Station, Mumbai, on 06.11.2019, under sections 406 and 420 r/w. 34 of the Indian Penal Code.

2. Heard Mr. Mithilesh Mishra, learned counsel for the applicant, Ms. Mahalakshmi Ganapathy, learned APP for the State

and Mr. Tariq Khan, learned counsel for the intervenor.

3. The F.I.R. is lodged by one Bhupinder Singh. He has stated that, he was knowing one Parizaad Engineer; who was an estate agent. In 2015, Parizaad introduced him to the applicant's husband Rajiv. She told the informant that, Rajiv was her family friend and he was in bad financial state. He needed financial help. The informant helped Rajiv in paying off the loan, taken from a bank and the finance company, on his office premises. The informant also helped Rajiv in paying the installments of the loan taken on Rajiv and the applicant's flat No.601, at Lake Front Solitaire society, Adi Shankaracharya Marg, Powai, Mumbai. On 30.09.2015, Rajiv took Rs.2 crores from the informant through R.T.G.S. It was used to pay off the loan. As a security, Rajiv had given documents of that particular flat to the informant. Rajiv sold his office at Andheri (E) and repaid Rs.1,75,00,000/- to the informant on 13.11.2015. The rest of the amount was not returned. Rajiv was to sell his residential flat and to refund the informant's amout, but it was not possible for him. It is further mentioned in the F.I.R. that, on 10.09.2018 the applicant and Rajiv

met the informant and requested for Rs.2 crores. Rajiv told him that, there was a dispute between Rajiv and the applicant and the applicant wanted to purchase a flat from her friend at much lesser price than the market price. The informant again decided to pay Rs.2 crores to him. At that time, as a security, the informant told Rajiv to execute an agreement for sale. Accordingly, it was decided that the said flat would be purchased by the informant for Rs.5,15,00,000/-. The informant, by way of concession, told Rajiv that they could sell that flat for higher price to somebody else within a stipulated period and then he should return the informant's amount with further damages of Rs.2,97,00,000/- and, thus, he should pay the informant Rs.6,97,00,000/-. It is further mentioned that the documents were executed. The power of attroney was registered in favour of Parizaad. Rajiv and the applicant signed the agreement for sale and registered the said document. The informant paid Rs.1,50,00,000/- in the account of the applicant. However, subsequently, no further steps were taken. The flat was not given to the informant. It was further noticed by the informant that, Rajiv had sold that flat to one Shambhuprasad

Singh Rathi. But that transaction was also not completed and, ultimately, the applicant and Rajiv continued staying in that flat. Thus, the allegations are that the applicant and Rajiv had caused losses to the tune of Rs.7,27,00,000/- to the informant. On this basis the F.I.R. was lodged.

4. Learned counsel for the applicant submitted that the dispute between the parties is referred to a Sole Arbitrator pursuant to the order passed by a Single Judge bench of this Court on the Original Side in Commercial Arbitration Application No.113 of 2023 vide the order dated 24.07.2023. He submitted that the main allegations are directed against the applicant's husband Rajiv. There is a reference to receiving Rs.1,50,00,000/- in the account of the applicant, but beyond that she has not played any part in the transaction. In any case, as is evident from the aforesaid order in the arbitration proceedings that, this is a commercial dispute. He further submitted that the applicant is on interim protection since 07.01.2021. Thus, more than three years have passed. There are no allegations that she has misused that liberty or that she has not co-operated with the investigation.

5. Learned counsel for the first informant, as well as, the learned APP submitted that the original documents of the agreement for sale and the power of attorney bear signatures of the present applicant. Therefore, it cannot be said that, she was not involved in or was not aware of the transaction. She has also received more than Rs.1 crore in her account. However, both of them could not deny the fact that, as of today, the matter is referred for arbitration.

6. All the three learned counsel submitted that the applicant's husband Rajiv was already arrested and, as of today, he is released on bail.

7. I have considered these submissions. As mentioned earlier, the applicant was on interim protection for more than three years. There are no allegations that, she has not co-operated with the investigation or that she had misused that liberty. The F.I.R. itself indicated that the representations were made by her husband and he was instrumental in going ahead with all the transactions between the parties. As of today, the matter is referred to the sole

arbitrator for arbitration between the parties. There was another F.I.R. lodged by the applicant's husband against the informant in this case. In a companion matter i.e. A.B.A.No.909 of 2022, I have granted anticipatory bail to the informant Bhupinder. Taking into account all these factors, custodial interrogation of the applicant will not serve any purpose. The documents in question are already in the custody of the investigating agency. A question that the money which was received by the applicant and her husband was for purchase of that flat or for any other business purpose will ultimately be decided in the arbitration proceedings.

8. In this view of the matter, the applicant can be protected U/s.438 of the Cr.p.c. It is made clear that, all these observations are made only for the purpose of passing of this order.

9. Hence, the following order :

O R D E R

i) In the event of her arrest in connection with C.R.No.648 of 2019 registered at Powai Police

Station, Mumbai, the applicant is directed to be released on bail on her 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 Application is disposed of.

iii) In view of disposal of the main application, the interim application is also disposed of.

(SARANG V. KOTWAL, J.)