IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 460 OF 2024

Prakash Kumar Raj and Anr. .... Applicants

Versus

The State of Maharashtra .... Respondent

Mr. R.R. Varma a/w Sanket Thorat, Sachin S. for the applicants.
Mr. Aashish Satpute, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.
DATE : 16th FEBRUARY, 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.- 68 of 2024 registered with Bandra Kurla Complex Police Station on 21/01/2024 under sections 406, 420,465, 467, 468, 471, 120-B of the Indian Penal Code.

2. Heard Shri Varma,learned counsel for the Applicants and Shri Satpute, learned APP for the State.

3. The FIR is lodged by one Suhas Ovhal. He was working with M/s Shreeram City Union Finance Ltd. It was a non banking

Finance Company. It was in business of giving loans, business loans etc. The applicants were Directors of M/s Mountain Edge Tours and Holidays Private Limited. Their registered office is at Andaman-Nicobar. Both of them had approached the informant's Company's office through Shivpujan Pande and Rishab Khanna. They made four applications for sanctioning of loan for purchasing office numbers 03, 05, 15, 17 on the 1st floor, A wing, 119, Business Point, Sahar Road, Andheri (East), Mumbai by mortgaging the said property. They wanted loan of Rs. 1 crore each for purchasing the offices. They submitted the documents alongwith their application. The informant's Company verified those documents. They saw their CIBIL scores. The Company was satisfied about their scores. The informant's Company obtained valuation report from the government appointed valuers. They also obtained property title search report. All these reports were positive and therefore on 30/05/2018 and 30/06/2018, informant's Company sanctioned loan of Rs. 4,90,00,000/- in favour of both the applicants. The applicants and informant's Company entered into four agreements for that loan. Both the applicants submitted four agreements which they had entered into with the builder namely Roy Ambrose Credo in respect of those four properties. According to the instructions given by the applicants, the loan amount was deposited in the bank account of Roy Ambrose Credo maintained with Axis Bank. Said builder had given NOC for mortgaging those properties. Informant's Company had registered notice of intimation in respect of mortgaging of those properties with the Sub Registrar, Andheri. Thus, the informant-Company deposited loan amount of Rs. 4,80,00,445/- in Roy Ambrose Credo's two bank accounts. Initially applicants paid four installments, but thereafter the installments were not paid. They started giving evasive replies. Informant's Company employees made inquiry. They went to the building where those properties were situated. It was revealed that the office numbers 03,05,15 and 17 were not in existence at all. In fact, there were office numbers 103,105, 115 and 117 on the first floor of that building. Those offices were owned by different people. Thus the informant's Company realised that they were cheated. They made further inquiry and they came to know that major amount deposited in Roy Ambraso Credo's account was transferred to the applicants' account. In all Rs. 2,25,77,895/- were transferred from Credo's account to the applicants' Company's account. The FIR further mentions that one Chinmaykumar Nath and Rishab Khanna had misled the people who had done valuation and verification at the time of taking title search. On these allegations the FIR is lodged.

4. Learned counsel for the applicants submitted that the applicants themselves are the victims. The finance Company and the builder have cheated the applicants. They had made complaints to the police in January 2020, February 2020 and February 2021 but no action was taken by the police, and instead, this false complaint is lodged against the applicants. He submitted that the FIR itself mentioned that the finance Company had taken all the precautions in respect of valuation and search report and only thereafter the loan was sanctioned. Therefore, there was no scope to even suggest that the applicants had cheated the finance Company. The original documents are still with the complainant's

Company. He submitted that money which was transferred from Roy Ambraso Credo's account to the applicants Company was given for purchasing shares of the applicants Company. He submitted that the finance Company has initiated the insolvency proceedings before the Company Law Tribunal at Kolkata. This fact is suppressed from the FIR. The Interim Resolution Professional is taking steps to take charge of the applicants' properties which are worth more than 7 crores. The applicants have cooperated with the investigation when they were on ad-interim relief during pendency of their anticipatory bail application before the Sessions Court.

5. Learned APP opposed these submissions. He relied on the money trail which shows that the major amount of the loan sanctioned by the Company and deposited in the builder's account was transferred to the applicants accounts. He submitted that the allegations in the FIR themselves show that the offence is committed by the applicants. During the investigation it was revealed that office numbers 03,05,15,17 were not existing and

the offices which were in existence belonged to the other persons.

6. I have considered these submissions. First of all it is sufficiently revealed in the investigation that those particular offices were not in existence. Therefore, the applicants have obtained loan on non existing property. Properties which were mortgaged were not in existence at all. The actual offices which were on the first floor of that building belonged to somebody else. Thus it is a clear case of cheating. The applicants have not taken any steps to even suggest that though they were paying installments they had not been given possession of the offices. This conduct is also not explained by the applicants.

7. Though the learned counsel for the applicants submitted that the applicants have filed suit for those properties, however, question still remains that there were no such offices existing. It is also important to note that the major amount which was deposited in the builder's account has travelled back to the account of the applicants' Company. This is also strong incriminating circumstance against the applicants which indicates

that the transactions were entered into by the applicants only to get that money and they were not interested in getting the offices. The Insolvency Proceedings are totally an independent issue.

8. The offence of cheating, misappropriation and forgery of documents is clearly made out in this particular FIR. The offence is serious. The Applicants' custodial interrogation is therefore necessary. Therefore, no relief under Section 438 of Cr.P.C. can be granted to the applicants. The Application is rejected.

(SARANG V. KOTWAL, J.)