IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 454 OF 2024

Anil Sarjerao Pawal & Anr. ..Applicants
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Priyal G. Sarda for Applicants.
Ms. Mahalakshmi Ganapathy, APP for State/Respondent.

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

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No.14 of 2024 registered at Shivaji Nagar Police Station, Pune City, on 11.01.2024, under Sections 420, 406, 506 r/w. 34 of the Indian Penal Code.

2. Heard Mr. Priyal Sarda, learned counsel for the applicant and Ms. Mahalakshmi Ganapathy, learned APP for the State.

3. The F.I.R. is lodged by one Pratap Dhamale. He has stated that, he was knowing both the applicants. In 2008, they

held the meetings with the informant and told him that they could develop the property at City Survey No.7366/A/1, admeasuring 51900 sq.mtr. They told the informant that, if he invested in that project, he would get good profit. They further told the informant that the owners of that land Baby Patole and their family were very close to them. The informant was shown the place and the documents. On 20.02.2008 they had meeting at a hotel in Pune and it was decided that the entire investment was to be made by the informant. The removal of encroachments, development work and the transactions with the owners would be completed by both the applicants and the profit was to be shared by all the three i.e. the applicants and the informant. Accordingly, on 27.02.2008 the land owner Baby and her family was given a cheque of Rs.2,50,000/-. On 01.03.2008, a power of attorney was executed and registered. The informant paid Rs.1,09,29,000/- from time to time to both the applicants till 16.11.2010 through cash and cheques. The details are mentioned in the F.I.R. Both of them had executed a receipt on a stamp paper. It was executed on 16.11.2010. They also took money to remove the encroachments.

Thus, in all, the informant had paid Rs.1,11,45,000/- in respect of that land. On 31.03.2012, the informant, these two applicants and the land owners executed an agreement for sale in favour of Anil Shinde and others. Rs.50 lakhs were taken in that transaction. Out of which, Rs.20 lakhs were given to the informant. The applicant Anna Lashkare needed money and, therefore, the informant gave him Rs.19 lakhs and entered into an MoU on 06.12.2012. As per that MoU, the share of the profit which was to be received by Lashkare was to be given to the informant. The informant was waiting patiently for the transaction to be completed. However, both the applicants did not fulfil their responsibility.

4. In 2019, the informant came to know that the land owners Patole and their family had lost the court case which they were contesting against the Municipal Corporation. Both the applicants gave evasive answers in that respect. On 30.08.2019, Patole family gave a public notice cancelling the power of attorney executed in the year 2008. On 10.01.2020, the applicants executed cancellation deed. Both of them took Rs.12,50,000/- and Rs.2,50,000/- in cash. The informant was not given a coy of that

cancellation deed. The applicants refused to return the money given by the informant. On this basis the F.I.R. was lodged.

5. Learned counsel for the applicants submitted that the applicants are disputing the signed receipt executed on a stamp paper on 16.11.2010 whereby they had purportedly acknowledged having received Rs.1,09,29,000/-. He submitted that, there is no proof that the informant had paid that amount to the applicants. He submitted that the land was of *Mahar Vatan's* land and since the land owners had lost the case the applicants had no role to play in that proceedings. He further submitted that, it was unbelievable that the informant would have paid such a huge amount for removal of encroachments. He submitted that the informant was merely an investor and he has no further role to play in that transaction. He has received his share of profit and, therefore, no offence is made out. He further submitted that, in execution of cancellation deed the applicants have not received any consideration.

6. Learned APP opposed these submissions. She produced

the copies of various agreements and MoU referred to herein above. She also produced a copy of the public notice published at the behest of Patole family. She relied on a copy of receipt dated 16.11.2010 executed on a stamp paper in token of having received Rs.1,09,29,000/- by the applicants. She also produced the other documents which are annexed to this application.

7. I have considered these submissions. The F.I.R. mentions in detail as to how the offence was committed. The informant had paid more than Rs.1 crores to the applicants. There is a receipt executed by them in that behalf. The main crux of the matter is that, both the applicants have separately executed the cancellation deed with the original land owners behind the back of the informant. It is an undisputed position that the power of attorney dated 01.03.2008 was executed by the original land owners Patole family in favour of both the applicants and the first informant together. Therefore, execution of the cancellation deed behind the back of the informant shows that the applicants had intention to cheat the informant and to misappropriate the amount invested by him. All these facts show that the applicants are

involved in this offence causing wrongful loss to the informant. Therefore, custodial interrogation of the applicants is necessary. They cannot be protected U/s.438 of the Cr.p.c.

8. The application is rejected.

(SARANG V. KOTWAL, J.)