IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.593 OF 2024

Vinod Valji Heliya .... Applicant

versus

State of Maharashtra .... Respondent

…....

- Mr. Zishan Quazi, Advocate for Applicant.
- Ms. Pallavi N. Dabholkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 04th MARCH, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.19/2024, dated 12/01/2024, registered with Tardeo Police Station, Mumbai, under sections 406, 420, 465, 471 of the Indian Penal Code.

2. Heard Mr. Zishan Quazi, learned counsel for the Applicant and Ms. Pallavi N. Dabholkar, learned APP for the State.

3. The FIR is lodged by one Kanji Parmar. He has stated that in 2018 he decided to purchase a hut in Tulshiwadi area. He came to know that one Ajju was getting rooms for the interested persons. The informant met him. His name was Abdul Aziz Abdul Rafiq Shaikh @ Ajju. He told the informant that, room No.DMG 134, New Approach Road, Tulshiwadi, was owned by Mohd. Atik Mohd. Shafi Shaikh and it was for sale. His hut was demolished in the redevelopment and there was temporary alternate accommodation in the form of T/9, 2nd floor, Room No.206, Approach Road, Tulshiwadi, in the transit camp and shortly a permanent alternate accommodation would be made available in place of that hut. Ajju showed him different documents in the form of share certificates, photopass, Aadhar card etc. The informant believed him and paid him Rs.28 lakhs, out of which Rs.18 lakhs were paid in cash. He also paid Rs.4,50,000/- in addition, to get the room at the earliest. Subsequently, till July 2023, the informant did not get any room. He made further enquiries. He came to know that the said Mohd. Atik had passed away in the year 2023 itself and since

2023 his daughter Afreen was residing in his room. The informant realized that the said Ajju has misappropriated his amount and has cheated the informant. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that the Applicant's name is not mentioned in the FIR. However, police want to arrest him. Therefore he preferred Anticipatory Bail Application before the Sessions Court. During hearing of that application, the investigating agency filed an affidavit-in-reply, in which there are allegations that the Applicant had threatened the first informant. There was earlier transaction wherein Rs.2 lakhs were paid by the informant in the bank account of the present Applicant's wife and son. That amount was Rs.2 lakhs each. Based on this allegation, the investigating agency wants to arrest the Applicant.

5. He further submitted that the said transaction between the informant and the Applicant's family was a completely different transaction, which was demonstrated by the fact that

the cheques given to Ajju were in different serial numbers. Those cheques have nothing to do with the cheques given to the Applicant's son and wife, which are bearing different serial numbers altogether. He submitted that the Applicant himself is the victim at the hands of said Ajju and Ajju had cheated him. He submitted that the Applicant's son had got a cheque from the informant's son's account. It had nothing to do with the transaction of that room respect. It was a different transaction.

6. Learned APP opposed these submissions. She submitted that the informant and his wife have given supplementary statements in which they have stated that the Applicant had threatened them not to disclose his name while lodging the FIR. He had threatened them that otherwise they would not be refunded the amount taken by the Applicant. She submitted that on the date of hearing of the anticipatory bail application in the Sessions Court, the Applicant had telephonically called the informant and had threatened him. The said fact was mentioned in the general diary of Tardeo police station. The informant and his wife had given their statements

u/s 164 of Cr.P.C. She submitted that considering this background, the Applicant cannot be protected u/s 438 of Cr.P.C.

7. I have considered these submissions. As far as the issuance of threats by the Applicant are concerned, the police are free to take appropriate action in that behalf. The question is as to whether the Applicant was instrumental in parting with that amount in favour of Ajju and whether that amount was taken from the informant at the instance of the present Applicant. To that question, there is no material to show that the Applicant and said Ajju had extracted the said amount from the informant in collusion. As far as the main offence of cheating the informant on the pretext of giving him the room is concerned, the Applicant has not played any role. In any case, the investigating agency does not have any material to connect the Applicant with the said offence. In this view of the matter, in the present case the Applicant can be protected u/s 438 of Cr.P.C. The Applicant will have to join the investigation and will have to cooperate with the investigation.

8. Hence, the following order :

ORDER

(i) In the event of his arrest in connection with C.R.No.19/2024, dated 12/01/2024, registered with Tardeo Police Station, Mumbai, the Applicant is directed to be released on bail on his furnishing PR 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 18/03/2024 to 20/03/2024 between 01.00 p.m. to 05.00 p.m. and thereafter as and when called and shall cooperate with the investigation.

(iii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)