IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.714 OF 2024

Vijayata Ahuja .... Applicant
Versus
The State of Maharashtra .... Respondent
....
WITH
INTERIM APPLICATION NO.1109 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.714 OF 2024

Mr. Niranjan Mundargi, Advocate a/w. Kunal Ambulkar i/b. Sandeep Dubey for the Applicant.

Ms. Poonam P. Bhosale, APP for the Respondent-State.

Mr. Ejaz Khan, Advocate a/w. Paresh B. Thakar, Sandeep Dubey, Parth Thakar for the intervenor in IA/1109/2024.

CORAM : SARANG V. KOTWAL, J.

DATE : 02nd APRIL, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.939/2022 dated 9.6.2022 registered at Oshiwara Police Station, Mumbai under sections 420, 465, 467, 468, 471, 120-B of IPC and under Section 12 of the Passport Act, 1967.

2. Heard Mr. Niranjan Mundargi, learned counsel for the Applicant, Ms. Poonam Bhosale, learned APP for the Respondent-State and Mr. Ejaz Khan, learned counsel for the intervenor in IA/1109/2024.

3. The FIR is lodged by one Mohd. Abbas Qureshi. He has stated that he has a flat at Gulshannagar, R-6, bearing flat No.301, 3rd floor, R.M. Road, Jogeshwari (West), Mumbai – 400 102. He had purchased that flat in the year 2015 and thereafter he had given the flat on rent to different persons. He had given it on rent to one Amjad between 13.4.2017 to 25.9.2019. Thereafter it was given to Nilofar between 30.9.2020 to 18.12.2021. After that it was given to Sultana Qazi from 30.1.2021 to 30.9.2022. In February, 2022 some CBI officers had gone to meet Sultana at that flat and they informed her that four passports were made on that particular address. The tenant Sultana informed the first informant about it. The CBI officers also had a discussion with the informant. The informant was called to the CBI office at BKC in May, 2022. He was told that the present Applicant and

other co-accused namely Sunilkumar, Sunita and Vaibhav had used that address and had created a forged document of leave and license agreement for the period between 3.10.2021 to 2.9.2022. They had forged signatures of the informant. They had also made complaint to Amboli police station about having lost their earlier passports. That complaint was made on 2.12.2021. Using that certificate of lodging the missing complaint and using the informant's address of that flat, they had got Aadhaar cards of these accused and had obtained passports on that address. As far as the Applicant is concerned, her passport number is 'V5774183'. The CBI officer Ajay Paul gave photocopies of all the concerned documents. The informant was also told that there were other offences pending against the co-accused Vaibhav and Sunilkumar in Uttar Pradesh. They were trying to leave India based on the fresh passports. On these allegations the informant lodged this FIR.

4. During investigation, Vaibhav, Sunilkumar and the agent Shajan Mewawala were arrested. As of today, all the

three are released on regular bail. After their arrest, the investigation was conducted and the charge-sheet was filed. A copy of the charge-sheet is annexed to the present Application.

5. Learned counsel for the Applicants made the following submissions:

i. There was no other case pending against her. She was residing in Dubai since 2014 and therefore she had no reason to use this particular passport to leave India. The Applicant did not create any forged documents or used any forged document to get the passport. She could have got any apartment on rent and could have got her passport on that address. This is exactly what she had done and therefore no offence is committed by her.

ii. There are no allegations that the Applicant or her family members had trespassed in the informant's flat. The passports were delivered on that particular address which shows that the Applicant was very much occupying the same premises. There was no reason for the informant to have a copy of the leave and license agreement if it was a forged document. The leave and license agreement was genuine which was retained by the informant and, therefore, the Applicant does not have original of the leave and license agreement.

iii. The other co-accused were already arrested and released on bail. Her custodial interrogation is not necessary.

6. Learned counsel for the informant submitted that he was put in serious trouble because of the offences committed by the Applicant and her family. They had illegally used the informant's address and dragged him in this controversy unnecessarily. He had suffered immense mental trauma as he had to answer various inquiries by the CBI officers and the police officers. In any case it is a serious offence in which the address of his flat was used by the Applicant and her family.

7. Learned APP relied on the charge-sheet to oppose this application and submitted a reply of the police, which is

taken on record. According to her, the Applicant's custodial interrogation is necessary because the forged document is with the Applicant. It is not produced by the arrested accused. The co-accused Vaibhav Ahuja was trying to leave India illegally inspite of the pending offence against him. At that time he was arrested. She relied on the allegations made in the FIR.

8. I have considered these submissions and I have perused the charge-sheet. The charge-sheet contains the copies of the leave and license agreement which are accepted by the informant as having been executed by him. Thus the leave and license agreements are between the informant and the aforementioned tenants Nilofar Shaikh and after her Sultana Quaze. According to the first informant he had executed leave and license agreement with Nilofar for the period between 30.9.2020 to 18.12.2021 and subsequent leave and license agreement with Sultana for the period between 1.1.2022 to 30.11.2022 (as per the copy in the chargesheet). The leave and license agreement included in the charge-sheet with Nilofar is for the period between

25.9.2019 to 24.8.2020. In the charge-sheet a copy of the leave and license agreement for the period after August, 2020 to January, 2022 when it was given to Sultana is not seen. However, the FIR mentions that in the year 2021 it was given on rent to Nilofar. The incident and use of that flat for obtaining passport had taken place in December, 2021. A copy of the forged leave and license agreement is included in the charge-sheet. It was purportedly executed on 18.11.2021 and the period for the leave and license was from 3.10.2021 to 2.9.2022. This leave and license agreement, according to the informant and the prosecuting agency, is forged.

9. In that context the statement of the Notary Alate is important. He has stated that he was shown a photo-copy of the said leave and license agreement. He has clearly stated that it was not executed in his presence. The parties mentioned in that leave and license agreement had never come before him. He did not know them. The document was brought to him through Advocate Suresh Singh who had verified the identity of the parties executing that document.

Suresh Singh's employee had asked this witness Alate to notarize the document. On his say, the Notary Alate had notarized that document. He has categorically stated that at that time neither of the parties was present before him. This statement is very important which supports the prosecution case that it was a forged document and it was prepared behind the back of the first informant. It is one of the most incriminating circumstance against the Applicant and her co-accused. Apart from that the investigation showed that the flat was given on leave and license basis to Sultana from 1.1.2022. Thus, only for the crucial period of December, 2021, this particular flat was used to create the forged document and to obtain the passports.

10. The statement of the police constable Sanjay Rathod who had visited that premises for verification of the address mentions that he had gone to that address on 3.12.2021. At that time the Applicant was found at that address and she had shown the leave and license agreement to him. Based on that the constable Rathod had given his

verification report. This statement also shows that the Applicant had used that forged document for satisfying P.C. Rathod about her residence in that flat. Thus forged document was not only created but it was actually used in obtaining the passports. The question as to how she occupied that premises without any authority will have to be answered by the Applicant. All these circumstances are strongly incriminating against her, for which the Applicant's custodial interrogation is necessary. It is quite clear that the passport was obtained with criminal intention and design by creating forged documents. All this requires custodial interrogation of the Applicant. Therefore, the Applicant cannot be protected under Section 438 of Cr.P.C.. In this view of the matter, the Application is rejected. With rejection of the Application, nothing survives in the intervention application. It is also rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)