IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1023 OF 2021

Rajeshree Bhausaheb Vikhe Patil ... Applicant

Vs.

State of Maharashtra and Others ...Respondents

ANTICIPATORY BAIL APPLICATION NO. 2403 OF 2023

Rajeshree Bhausaheb Vikhe Patil ... Applicant

Vs.

State of Maharashtra ...Respondent

Mr. Gaurav Chaubey with D. Gogri i/b Satish Kumbhar, for Applicants.
Mr. S. H. Yadav, APP for State.
Mr. G. R. Waghmare, for Intervener.
Mr. Gaurav Tawar, PSI, Dadar Police Station, Present.

CORAM:- N. J. JAMADAR, J.
DATED:- 8th JANUARY, 2024

ORDER:-

1) As similar set of allegations are made in the underlying FIRs in both these applications, they were heard simultaneously and are being decided by this common order.

Facts in ABA No. 1023 of 2021:-

(a) Pramod Krushna Pavaskar, the first informant and his brother were in search of larger premises. Mr. Vinayak Parab introduced the first informant and his brother to Vishnu Mahadik, accused No. 1 - the husband of the applicant, and the applicant. Representation was made that the accused would sell MHADA flats at concessional rates.

(b) The first informant alleged that the accused had shown room Nos. 4 and 5 in Ivory Tower, 17th floor, Prabhadevi, Mumbai and promised to sell the premises for a consideration of Rs.29,00,000/- each. The first informant alleged an amount of Rs.44,00,000/- was credited to the account of accused No. 1- Vishnu and a sum of Rs.10,50,000/- each was paid in cash to accused No. 1- Vishnu and the applicant in the year 2016. The first informant alleged that in fact the cash amount of Rs.10,50,000/- was collected by the applicant from the house of the first informant. The premises were not delivered as promised.

Accused No. 1- Vishnu had allegedly handed over photostat copies of the documents purportedly issued by MHADA and Mumbai Repairs and Reconstruction Board. Accused No. 1 – Vishnu eventually executed a writing acknowledging to pay a sum of Rs.1,30,00,000/- in the event of failure to deliver possession of the premises by 15th August, 2019. A sum of Rs.7,00,000/- was returned by the accused No. 1. Balance amount was not repaid. Having realised the fraud, the first informant lodged the report.

Facts in ABA No. 2403 of 2023:-

(a) Yogesh Chaudhari, the first informant, alleged that he was working as a Chartered Accountant with Rajendra and Company. Upon being introduced by a colleague Mr. Ranjit Singh, accused No. 1 – Vishnu and the applicant had made a representation to the first informant that a room was available for allotment at Century Bazar, Worli and it would be allotted to the first informant for a consideration of Rs.35,00,000/-. During the period 2016 to 2018, the first informant claimed to have paid a sum of Rs.23,00,000/- to accused No. 1- Vishnu through banking channels and a sum of Rs.20,50,000/- in cash to accused No. 1 – Vishnu and the applicant. The first informant alleged that he was made to part with more amount on the pretext that there was a rise in the price of the flat as the first informant delayed the initial payment.

(b) The first informant further alleged that after inducing him to part with the said amount, the accused started to avoid answering his phone calls and become untraceable. The applicant's whereabouts could be ascertained only when she obtained bail in another matter. The first informant alleged that apart from the sum of Rs.43,50,000/-, the accused defrauded his friend Ranjit Singh as well for a sum of Rs.40,00,000/-. Hence, the report.

2) A common allegation in both FIRs is that the applicant had represented that she is the sister of a political leader and with his intervention, they would secure the flats.

3) In ABA No. 1023 of 2021, by an order dated 26th April, 2021, this Court granted interim bail to the applicant as she had shown willingness to pay a sum of Rs.10,50,000/-, which was allegedly paid in cash to the applicant. Subsequent orders record that the balance amount has also been deposited by the co-accused – Vishnu.

4) In ABA No. 2403 of 2023, by an order dated 21st September, 2023, interim bail was granted to the applicant as a submission was made that in another FIR containing almost identical allegations, this Court had granted interim protection to the applicant.

5) It would be contextually relevant to note that the accused No. 1- Vishnu passed away.

6) The learned Counsel for the applicant submitted that so far as the allegations in CR No. 27 of 2021, the entire amount allegedly parted with by the first informant has been repaid. Having regard to the nature of the accusation in the said FIR qua the applicant, at this stage, further custodial interrogation of the applicant is not warranted.

7) As regards the offences in FIR No. 462 of 2022, lodged by Yogesh Chaudhari in ABA No. 2403 of 2023, the learned Counsel for the applicant submitted that the prosecution has resorted to implicating the applicant in multiple FIRs by making false allegations against the applicant. It was submitted with a degree of vehemence that in the FIR, the first informant had referred to the alleged fraud having been practised on Ranjit Singh as well. However, Ranjit Singh had not lodged any report in respect of the said occurrence. This is indicative of the course adopted by the prosecution to keep the applicant embroiled in the prosecutions.

8) The learned Counsel for the applicant further submitted that there was an independent transaction between Shri. Mahavir Society, of which the said Ranjit Singh is an authorised person, and accused No. 1- Vishnu evidenced by MOU under which the premises of the society were to be leased out to the accused No. 1 and consideration was received thereunder. In any event, according to the learned Counsel for the applicant, the applicant has no role in any of the alleged transactions. It has been recorded in another matter arising out of CR No. 59 of 2020 that all the allegations were against the husband of the applicant. In fact, the applicant had instituted a Petition for divorce on account of marital discord.

9) The learned APP resisted the prayers for pre-arrest bail. It was submitted that in as many as three FIRs, the applicant has been arraigned with a similar set of accusations. In the circumstances, according to the learned APP, the applicant can be said to have resorted to duping the person by taking undue advantage of her relationship with a political personality. It was further submitted that while on interim bail, the applicant has not co-operated with the investigation. Therefore, custodial interrogation of the applicant is warranted.

10) Mr. Waghmare, the learned Counsel for the intervener stoutly resisted the prayer for pre-arrest bail. It was urged that the first informant and his friends have been duped to the tune of Rs.83,50,000/-. Custodial interrogation of the applicant is indispensable to facilitate further investigation. Registration of a number of crimes against the applicant with almost identical allegations, dis-entitles the applicant from the relief of pre-arrest bail, urged Mr. Waghmare.

11) I have perused the allegations in the FIR in both cases carefully. As regards the allegations in the FIR lodged by Pramod Pavaskar in ABA No. 1023 of 2021, the role attributed to the applicant is that of being present when the co-accused – Vishnu made representations. Additionally, the applicant had also made false representations. The applicant had collected a cash amount of Rs.10,50,000/- from the first informant.

12) As noted above, the applicant has, without prejudice to her rights and contentions, deposited the said amount of Rs.10,50,000/-. Undoubtedly, that would not dilute the gravity of the allegations, if otherwise substantiated. However, if the allegations in the FIR are considered in their entirety, it becomes evident that most of the allegations are against Vishnu, the late husband of the applicant. The amount was credited through banking channels to the account of Vishnu. He had allegedly delivered photostat copies of the documents, which were found to be forged. Vishnu had executed a written acknowledgement to repay the sum of Rs.1,30,00,000/-.

13) In the face of the aforesaid material, the submissions on behalf of the applicant that she had been roped in for being the wife of Vishnu, appears to carry conviction. It is imperative to note that it is not alleged that the applicant had delivered the photostat copies of allegedly forged documents. Resultantly, the offences punishable under Sections 465, 467 and 471 of the Penal Code cannot be prima facie attributed to the applicant.

14) With regard to the offence punishable under Section 420 of the Penal Code, the allegations are primarily against Vishnu. The said offence entails punishment which may extend to seven years. As the applicant has been on interim bail since 26th April, 2021 and had appeared before the Investigating Officer pursuant to the directions of this Court upon a grievance having been made that the applicant had not co-operated with the investigation, at this length of time, further custodial interrogation of the applicant does not seem warranted.

15) I am, therefore, impelled to make the order of interim bail dated 26th April, 2021 in ABA No. 1023 of 2021 absolute.

16) In ABA No. 2403 of 2023 also, the allegations are primarily against Vishnu in the sense that the amount through banking channels came to be credited to the account of Vishnu. Indeed there are allegations that a sum of Rs.20,50,000/- was paid in cash to both Vishnu and the applicant. However, the said allegations prima facie lack element of certainty as to time and place. Moreover, the claim of the applicant that there was another transaction between Ranjith Singh and Vishnu Mahadik – Accused No. 1 is evidenced by the MOU (Exhibit K to the application). The allegations in the FIR that the applicant and co-accused also defrauded Ranjit to the tune of Rs.40,00,000/- prima facie appears to be bald and vague. The FIR does not divulge the particulars as to the premises which were to be sold to Ranjit, time and mode of parting with the alleged amount and the other particulars.

17) This takes me to the submission on behalf of the prosecution that the applicant has been arraigned in three crimes. As noted above, in CR No. 59 of 2020, the learned Sessions Judge was persuaded to grant pre-arrest bail to the applicant by observing that the allegations were primarily against the husband of the applicant. That appears to be a common feature of the allegations in the instant FIRs as well. Since it is not alleged that the applicant had either made false documents or used the false and forged documents as genuine, at best, the applicant can be roped in for the offence punishable under Section 420 of the Penal Code. Since the said offence entails punishment which may extend to seven years and the applicant is a woman, I am inclined to make the order of interim bail dated 21st September, 2023 also absolute.

18) Hence, the following order.

ORDER

i) The orders of Interim Bail dated 26th April, 2021 in ABA No. 1023 of 2021 and Interim Bail dated21st September, 2023 in ABA NO. 2403 of 2023 are made absolute on the terms and conditions incorporated therein.

ii) The applicant shall appear before the Investigating as and when directed by the Investigating Officer.

iii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

iv) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

v) The application stands disposed.

[N. J. JAMADAR, J.]