IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 915 OF 2024

Bramprakash Upadhyay ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. A. K. Shukla for Applicant.
Ms. Rajeshree V. Newton, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 2 MAY 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.2386 of 2022 registered at Sakinaka Police Station, Mumbai, on 26.12.2022, under sections 406 and 420 r/w. 34 of the Indian Penal Code.

2. Heard Mr. Shukla, learned counsel for the applicant and Ms. Rajeshree Newton, learned APP for the State.

3. The F.I.R. is lodged by Smt. Umarjahan Shaikh. She has stated that she wanted to purchase a house and her mother also wanted to purchase a house in the year 2013. One agent Sudhakar

introduced them to the present applicant who is named as Dinesh Upadhyay alias Bramhprakash Upadhyay. The applicant represented to the informant and her mother that, he and his employer Dinesh Shah were in the business of purchase and sale of rooms. He further represented to the informant and her mother that, he would get a good room for them in a good society for a reasonably lesser price. The applicant told them that, two rooms were available in Sangharsh Nagar for Rs.7,50,000/- each. The informant and her mother liked those rooms and they were within their budget. The F.I.R. thereafter mentions that the applicant obtained Rs.13 lakhs on different occasions. The cheques were given in the name of the present applicant. In all, total amount of Rs.13 lakhs was paid. But after that, the applicant did not take any steps to give the rooms to the informant and her mother. Instead, some cheques were given to the informant's mother issued by the co-accused Dinesh Shah. Those cheques were dishonoured. The informant waited to get back the money. But, ultimately getting fed up, she made a complaint before the police and then this F.I.R. was lodged.

4. Learned counsel for the applicant submitted that the transaction was of the year 2013. For a long time, no grievance was made by the informant and, therefore, after all these years the applicant's custodial interrogation is not necessary. He further submitted that the money which the applicant had taken was given to his employer Dinesh Shah and, therefore, the applicant is not the beneficiary in this case. The very fact that the cheque in repayment of the amount was issued by Dinesh Shah shows that he was the real beneficiary and, therefore, the applicant was not an offender.

5. Learned APP opposed these submissions. According to her, the informant waited for sufficiently long time to lodge this F.I.R., but the fact remains that she had not received the amount which she and her mother had given. Learned APP emphasized the fact that the cheues were issued in the name of the present applicant and, therefore, the money was received by him. At this stage, he cannot shift the blame on the other accused. Learned APP submitted that, there is one more offence of a similar nature which is pending against the present applicant.

6. I have considered these submissions. The informant and her mother are financially poor. They wanted to purchase the house. Therefore, they paid Rs.13 lakhs together to the present applicant. The cheques were issued in the name of the applicant. Therefore, the applicant cannot shirk his responsibility by shifting the blame solely on the co-accused. The amount is misappropriated by the applicant. Undoubtedly, there is long period before the informant approached the police station, but the fact remains that the informant waited and gave sufficient opportunity to the applicant to return the amount. Left with no choice, she approached the police. The informant and her mother are poor people. They were expecting their money back; which they did not get. The offence of cheating, as well as, misappropriation is clearly made out in the facts of this case. The applicant cannot take advantage of his own wrong. I do not find substance in the submission of learned counsel that only the applicant's employer is responsible. The cheques were issued in the name of the applicant. If the entire transaction was completed by the applicant's owner, the cheques would have been issued in the

name of his employer. The applicant's complicity in the offence is made out. As submitted by the learned APP, there is one more similar antecedent is pending against the applicant. Therefore, considering the over all circumstances, the applicant's custodial interrogation is necessary to find out how the offence is committed. He cannot be protected U/s.438 of the Cr.p.c.

7. The application is rejected.

(SARANG V. KOTWAL, J.)