

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1195 OF 2023

Charanjit Kaur Udhvir Singh ...Applicant
vs.
The Sr. Inspector of Police, Kalamboli
police station and Anr. ...Respondents

Mr. Kunal Nawale i/b. Ms. Sangita Manjrekar, for the Applicant
Mr. Prashant Jadhav, APP, for the State.
Mr. Priyal Sarda a/w. Mr. Shubham Sane, for Respondent No. 2.

CORAM : N. J. JAMADAR, J.
DATE : APRIL 18, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 360 of 2019 registered at Kalamboli police station for the offences punishable under sections 420, 417, 471 and 406 read with 34 of Indian penal Code, 1860.
3. By an order dated 16th October, 2023 this Court has granted interim bail to the applicant.
4. The first informant lodged the report with the allegations that the applicant and her husband had induced the first informant to part with a sum of Rs. 10 lakhs by making a false representation that the first informant would be inducted as a licensee in the shop

premises, bearing Shop No. 7, Jay Apartment, Panvel. The applicant had executed a registered Leave and Licence Agreement on 29th March, 2019. However, the first informant was not put in possession of the said premise. The inquiry revealed that the applicant had executed another Leave and License Agreement with Mr. Sunil Gadekar on 10th May, 2019. It further transpired that the applicant had raised a loan on the said premises from Abhyudaya Bank. Having realized the fraud, the first informant lodged a private complaint as the jurisdictional police refused to register the FIR. Pursuant to the order passed by the learned Magistrate under section 156(3) of the Code of Criminal Procedure, the FIR came to be registered.

5. Mr. Nawale, the learned counsel for the applicant, submitted that the applicant had no intention to deceive the first informant. At best, it could be urged that the applicant had not disclosed the fact that the security interest was created in the subject shop. At any rate, when the agreement was entered between the applicant and the first informant, there was no dishonest intention.

6. Mr. Jadhav, the learned APP, resisted the prayer for pre-arrest bail. It was submitted that within few months of the execution of the agreement with the first informant, another Leave and Licence agreement came to be executed with Mr. Gadekar. The

learned APP further submitted that after execution of second Leave and Licence agreement eventually the applicant has sold the shop premises to a third party, without clearing encumbrance. Thus, the dishonest intention is clearly evident.

7. Mr. Sarda, the learned counsel for the first informant, also resisted the prayer for bail. It was submitted that the applicant had a clear intent to defraud the first informant. The first informant was defrauded for a sum of Rs. 10 lakh in a systematic manner. Therefore, the applicant does not deserve the relief of pre-arrest bail.

8. It appears that the applicant had executed a Leave and Licence agreement in favour of the first informant in the month of March, 2019. Subsequently, another Leave and License agreement came to be executed in favour of Mr. Gadekar. Allegedly, the first informant was not put in possession of the shop premises. Merely because there was failure on the part of the applicant to deliver the possession of the flat to the first informant, an inference of dishonest intention, which is the linchpin of the offence of cheating, cannot be drawn. In any event, that would be a matter of adjudication at the trial.

9. Investigation seems to be complete. Having regard to the nature of accusation, the custodial interrogation of the applicant is

not warranted. The applicant is a woman. She appears to have roots in society.

10. I am, therefore, impelled to make the order of interim bail dated 16th October, 2023 absolute.

11. The order of interim bail dated 16th October, 2023 is made absolute on the terms and conditions incorporated therein.

12. In addition, the applicant shall regularly attend the proceedings before the jurisdictional Court.

13. It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)