IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3258 OF 2023

Ganpat Manohar Shelar ..Applicant
Versus
State of Maharashtra ..Respondent

WITH
INTERIM APPLICATION NO. 4389 OF 2023

Azaruddin Badashaha Pendhari ..Intervenor.

In the matter between:

Ganpat Manohar Shelar ..Applicant
Versus
State of Maharashtra ..Respondent

Mr. Vedchetan Patil for Applicant.
Ms. Mahalakshmi Ganapathy, APP for State/Respondent.
Mr. Nilesh Navale for Intervenor.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 8 FEBRUARY 2024

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No.239 of 2023, registered at Vashi Police Station, Navi Mumbai, on 10.08.2023, under Section 420 of the Indian Penal Code.

2. Heard Mr. Vedchetan Patil, learned counsel for the applicant, Ms. Mahalakshmi Ganapathy, learned APP for the State and Mr. Nilesh Navale, learned counsel for the Intervenor.

3. The F.I.R. is lodged by one Azaruddin Pendhari. He has stated that, he was working with Merchant Navy. He wanted to purchase a flat in Navi Mumbai. In June 2018, he came to know that the applicant's flat in Amruteshwar Apartment CHS Ltd. was for sale. The informant contacted the applicant. They met at Vashi in a hotel. The applicant showed his willingness to sell that flat for Rs.57 lakhs. The informant paid Rs.2 lakhs as token money. Then paid Rs.7,43,000/-. The informant took loan from the PNB Housing Finance on 14.08.2018 and gave Rs.47 lakhs to the applicant. In September 2018, the applicant gave possession of that flat to the informant. In the meantime, the informant was on his duty. He returned in July 2022. At that time, he saw the notice of DRT-3 Mumbai mentioning that the loan amount of Rs.34,96,229/- as due and payable to the Bank of Maharashtra. The informant asked the applicant. At that time, the applicant told him that, he had sold that flat to one Mohan Sharma; but since he

had not taken possession of the flat, it was sold to the informant. The informant made enquiries. He came to know that Mohan Sharma had taken home loan from the Bank of Maharashtra on the same flat and the Demand Draft was given to the applicant. Thus, the applicant had sold the same flat to two different people and had obtained the amount from the informant without disclosing this fact to the informant. On this basis, the F.I.R. is lodged.

4. Learned counsel for the Applicant submitted that the aforementioned Mohan Sharma had in fact taken loan from the Bank of Maharashtra, as well as, from the Allahabad bank and the loan sanctioned by the Allahabad bank was disbursed in the applicant's account. He submitted that the applicant had told this fact to the informant. He further submitted that, if he is given some reasonable time, the applicant would try to see to it that the informant is compensated.

5. Learned APP and learned counsel for the informant opposed these submissions.

6. Learned counsel for the informant submitted that the

applicant has received much higher amount on that flat in different loan transactions. The applicant had not pointed out this fact to the informant.

7. Learned APP produced the investigation papers and, in particular, produced a copy of the agreement between the informant and the applicant.

8. I have considered these submissions. The agreement between the informant and the applicant makes a specific reference that the flat was free from all encumbrances, charges or attachment. It is quite clear that the applicant was aware of the loan taken by Mohan Sharma on that flat. The amount of loan was disbursed in the account of the applicant. Mohan Sharma, thereafter, had not taken possession of that flat. That clearly indicates that the applicant was aware of the encumbrances of other financial entity on the flat and yet suppressing all these facts, he had entered into the transaction with the informant. He had taken money from the informant and he had also obtained the home loan amount sanctioned in respect of that flat in the name of

the informant. All this amount is misappropriated by the applicant. It is a clear case of cheating, as well. Hence, no case for protection U/s.438 of the Cr.p.c. is made out.

9. Hence, the application is rejected. With disposal of this anticipatory bail application, the interim application is also disposed of.

(SARANG V. KOTWAL, J.)