IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.455 OF 2024

Sheshrao Kaluram Rathod …..Applicant
Versus
State of Maharashtra …. Respondent

Ms. Anjali R. Patil, Advocate a/w. Jigar K. Engineer for the Applicant.

Mr. Pankaj P. Deokar, APP for the Respondent-State.

Mr. Ajay S. Mishra, Advocate i/b. Imtiyaz Patel for the Intervenor.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th FEBRUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.418/2023 registered with Pelhar Police Station on 1.5.2023 under Sections 406, 420, 448, 504 and 506 of IPC.

2. Heard Ms. Anjali Patil, learned counsel for the Applicant, Mr. Pankaj Deokar, learned APP for the Respondent-State and Mr. Ajay Mishra, learned counsel for the Intervenor.

3. The FIR is lodged by one Mubarak Fidahussain Chauhan. He has stated that he had a land at Vasai. He had given contract to construct a compound wall on that land to the present Applicant. The Applicant told him that he had started construction of a building at Dhanivbaug, Jadhav Pada and that he had permission of the CIDCO. He told the informant that if the informant invested in that building, he would earn good profit. The informant saw the photographs of the building. He was impressed. He believed the Applicant and decided to invest in that building. In 2013, the Applicant had started constructing that building at Dhaniv Survey No.124, Hissa No.02. He had named that building as 'KGN Apartment'. The informant had given him Rs.50 Lakhs by cash and cheque as investment. The informant told his friends and relatives that he had booked a flat in that 'KGN Apartment' and that they could get flats at the concessional rates. His friends and relatives were interested in purchasing flats in that building. It is mentioned in the FIR that the Applicant told the informant

that since all these people trusted the informant, he should sale those flats and should pay money to the Applicant. The Applicant executed a Special Power of Attorney on 22.10.2013 in favour of the informant for selling those flats in that building. It is the specific case of the informant that the money which was given to the informant by his relatives and friends was given to the present Applicant who was also the Proprietor of Komal Developers. Using that money the Applicant went on constructing that building. The FIR mentions names of 13 people to whom the flats were sold. Those people had paid the purchase money. The details are mentioned in the FIR. Thus, the informant and all these purchasers had paid Rs.1,54,42,492/- to the Applicant through cheque and cash. But thereafter the Applicant had not given those flats to the informant and the other flat purchasers. He did not refund their amount. It is mentioned in the FIR that the Applicant had sold those flats to other third parties and thus had committed the offence of cheating and misappropriation of the amount. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that the allegations in the FIR are not true. There is no proof that informant had paid this amount to the Applicant. She submitted that there are some receipts on record, but, they are all forged receipts and the Applicant has not signed those receipts.

5. She submitted that the investigating agency is manipulating the record and is helping the first informant. She further submitted that the Applicant is illiterate and, therefore, the informant is taking advantage of the situation. The Applicant has already filed a civil suit against the informant for specific performance and cancellation of their earlier agreement.

6. Learned APP as well as learned counsel for the first informant opposed these submissions. Learned APP produced the investigation papers before me. They

submitted that there are receipts executed and signed by the Applicant himself.

7. I have considered these submissions. I have also perused those documents. There are certain receipts purportedly signed by the Applicant. However, the investigation papers also include two Notarized documents in the nature of agreement for sale in which the Applicant and the Informant together have sold the said property to one Usman Imran Shaikh in July, 2015. There is another agreement which shows that the same property was sold by the Applicant and the informant together to one Amrin Fahad Sayyed. Those two agreements do not clarify whether those agreements were in respect of only a particular flat or entire building. Therefore, all these aspects will have to be explained by the investigating agency and the first informant.

8. The informant is permitted to file intervention Application explaining all these facts. The Applicant is also at liberty to file additional affidavit in support of the

application. In the meantime, till the next date, the Applicant can be protected by way of ad-interim relief. He will have to cooperate with the investigation.

9. Hence, the following order:

<u>O R D E R</u>

(i) In the event of his arrest in connection with C.R.No.418/2023 registered with Pelhar Police Station, till the next date, the Applicant be released on bail on his executing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

(ii) This order shall operate till 27.3.2024.

(iii) The Applicant shall attend the concerned Police Station from 4.3.2023 to 7.3.2024 between 1:00 p.m. to 5:00 p.m. and thereafter as and when called. He shall cooperate with the investigation.

(iv) Stand over to 27.3.2024.

(SARANG V. KOTWAL, J.)