IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.832 OF 2024

Kukibai Chadna & Anr. .... Applicants

versus

State of Maharashtra & Anr. .... Respondents

…….

- Ms. Manjiri Parasnis i/b. Prakash J. Salsingikar, Advocate for Applicants.
- Ms. Ranjana D. Humane, APP for the State/Respondent.
- Ms. Sartaj Shaikh, Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 03rd SEPTEMBER, 2024

P.C. :

1. The Applicants have preferred this application seeking anticipatory bail in connection with C.R.No.111/2023, dated 25/05/2023, registered with Naigaon Police Station, Mira Bhayandar, Vasai Virar, under sections 420, 406, 506 r/w 34 of the Indian Penal Code.

2. Heard Ms. Manjiri Parasnis, learned counsel for the Applicants, Ms. Sartaj Shaikh, learned counsel for the Respondent No.2 and Ms. Ranjana D. Humane, learned APP for the State.

3. The FIR is lodged by one Samar Abbas Hussain Sayyed on 25/05/2023. He has stated that he was in the business of land development since past 20 years. During the course of his business, he came in contact with one Lloyd Carvalho, who in turn introduced the informant to the Applicant No.1 Kukibai Chadna. Kukibai and Lloyd Carvalho along with one Paresh Sawant showed the informant various pieces of land at Survey No.34, at village Bapane, Taluka Vasai, in Hissa No.3/1, 1/2, 1/1, 3/2 of different areas admeasuring 134.50 R in total. They quoted the rate of Rs.10,75,000/- per Guntha and the total price was fixed at Rs.14,45,87,500/-. The FIR goes on to mention various instances on which the informant made payment to Carvalho and the Applicant No.1 Kukibai. The FIR goes on to mention various instances when the amounts either by cash or through bank transaction were paid in the accounts of both the Applicants and Lloyd Carvalho. The FIR mentions that in all, the informant had paid Rs.1,39,50,000/-. The FIR mentions that the original owner of the land, Kedarnath Mhatre had instituted litigation in Vasai Court and before the Revenue Authorities against the Applicant Kukibai. But the informant was not told

about it by both the Applicants and the said Carvalho. Instead, when the informant questioned about it, the co-accused Carvalho threatened him. Thus, the accused had misappropriated the aforesaid amount of more than Rs.1 Crores.

4. On the first occasion, i.e. on 28/03/2024, this Court had recorded in the order dated 28/03/2024 that the learned counsel for the Applicants submitted that the Applicant No.1 was willing to deposit the amount of Rs.60,50,000/- without prejudice to the Applicants' rights and contentions on the merits of the matter. Considering that statement, ad-interim relief was granted to the Applicants and I had directed the learned counsel for the Applicants to add the first informant as a party Respondent forthwith. Accordingly, the first informant was added as a party Respondent and today he is represented by his learned counsel. Therefore, today I have heard the learned counsel for the Applicants as well as learned counsel for the first informant and the learned APP.

5. Today, the learned counsel for the Applicants had showed willingness to deposit the amount of Rs.60,50,000/- in

this Court. She submitted that even pay orders and the cheques to that effect are ready. However, she submitted that the Applicants have strong objection for the informant withdrawing that amount if deposited in the Court. Learned counsel for the first informant strongly objected to this stand. She opposed grant of any relief to the Applicants in this case.

6. Considering the stand taken by both the sides, there is no point in permitting the Applicants to deposit an amount of Rs.60,50,000/- in this Court. The Anticipatory Bail Application cannot be treated as recovery proceedings in any manner. Ad-interim relief was granted to the Applicants seeking response from the first Respondent. Since both the parties have made the above submissions in this background, I have considered the submissions made by the parties on the merits of the matter.

7. Learned counsel for the Applicants submitted that the Applicants had no intention to cheat the first informant or to cause monetary loss to him or to misappropriate the amount given by him. She submitted that the Applicants were helpless because of the injunction order passed in the civil suit filed by

the said Mhatre. She submitted that because of that order, the Applicants could not transfer those lands in the name of the first informant. She further admitted that the money which was given by the informant is with the Applicants. She, however, disputed the exact amount given by the informant to the Applicants. She submitted that in this background, no offence is committed and therefore, the anticipatory bail application be allowed.

8. Learned APP on instructions submitted that the bank entries show that the amounts have gone in the bank accounts of both the Applicants and therefore, the offence is made out. The amount involved is huge.

9. Learned counsel for the first informant submitted that the informant is deprived of his huge amount. The Applicants were aware of the pendency of the litigation and yet huge amount was taken by him. The learned counsel for the Applicants submitted that the suit was filed on 21/02/2022 and the summons were served on the Applicants on 05/11/2022. The injunction order was passed on 25/11/2022. According to learned counsel for the Applicants as per the FIR, the last

installment which was paid by the informant was on 04/10/2022. According to the learned counsel for the Applicants the amount was not accepted after 25/11/2022 when the injunction order was passed.

10. I have considered these submissions. It is undisputed that huge amount has gone in the accounts of both the Applicants. Though learned counsel for the Applicants is claiming that the Applicants were helpless in transferring the land in view of the order dated 25/11/2022, the fact remains that even after that day, the Applicants have retained the amount taken from the informant. The said order was passed in Special Civil Suit No.50 of 2022 by the learned Civil Judge, Senior Division, Vasai. It was a suit between Ravindra Mhatre against the Applicant No.1 and others. Even assuming that the lands were not transferred because of the injunction order passed on 25/11/2022, the fact remains that the Applicants have retained huge amount taken from the informant. They have not established their bonafides by returning the amount. This will definitely attract the ingredients of criminal breach of

trust, which is a non-bailable offence punishable u/s 406 of the Indian Penal code.

11. Various amounts were given by the informant between the period of August 2022 to November 2022. The FIR shows that even on 17/11/2022, Rs.15 lakhs was accepted by the Applicant No.2. That amount of Rs.15 lakhs was in cash. Even on 21/11/2022, Rs.15 lakhs was further taken by the co-accused Lloyd. All these amounts were taken after the institution of the suit against the Applicant No.1 and some amount was taken even after the injunction order. All this shows the criminal intention on the part of the accused including the present Applicants. The amount involved is huge. The criminal intention to commit the offence is clear from the facts of this case. Willingness of the Applicants to deposit around Rs.60,50,000/- will not make any difference to the merits of the matter. Considering the gravity and seriousness of the offence, no relief u/s 438 of Cr.P.C. can be granted to the Applicants. The application is rejected.

(SARANG V. KOTWAL, J.)