Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1055 OF 2024

SANTOSH SUBHASH KULKARNI
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Date: 2024.04.30 19:38:13 +0530

1. Mihir Deepak Shah
2. Heena Deepak Shah ...Applicants

Versus

State of Maharashtra ...Respondent

Mr. Chaitanya Pendse, a/w Kiran Varma and Rahul Mishra, for the Applicant.
Ms. Gauri Rao, APP for the State/Respondent No.1.
Mr. Subhash Jha, a/w Ms. Neha Balani, i/b Law Global, for the Intervener.
API Balasaheb Todkar, Santacruz Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 26th APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the parties.

2. The applicants, who are arraigned in CR No.343 of 2024 registered with Santacruz Police Station, Mumbai, for the offfences punishable under Sections 420, 465, 468 and 471 read with Section 34 of the Indian Penal Code, 1860 (“the Penal Code”) and Sections 4 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, have preferred this application for pre-arrest bail.

3. The gravamen of indictment against the applicants is that the applicants, who are the partners of Heena Lifestyles and Deepak Himmatlal Shah, the deceased father of applicant No.1 and husband of applicant No.2, had induced the first informant, his mother Sulochanadevi and wife Shweta to part with a huge amount of Rs.1,67,50,000/- by making a false representation that they would sale a flat in a project then being developed at Deepak Building, Santacruz (West) Mumbai. Thereafter, the applicants went on to make repeated representations to sell one flat in lieu of another and eventually executed an Agreement for Sale and, later on, the applicants executed a conveyance in respect of the very same flat in favour of one Gangji Dharamshi Gothi and thereby duped the first informant and his family members. The applicants had allegedly forged a certificate of registration of the project purportedly issued by the Maharashtra Real Estate Regulatory Authority (MahaRERA) though the registration had already lapsed.

4. Initially, Mr. Pendse, the learned Counsel for the applicant, made an endeavour to urge that though an agreement for sale was executed between the applicants and the first informant on 9th November, 2021 in respect of Flat No.404 in the building Gokul Mohan, yet the real nature of the transaction between the first informant and the applicants was that of money-lending.

However, when the Court expressed its disinclination to entertain the plea for pre-arrest bail, qua applicant No.1, in particular, Mr. Pendse sought leave to withdraw the application qua applicant No.1.

5. As regards application No.2 Heena Shah, Mr. Pendse submitted that applicant No.2 had no role in the day to day management of the affairs of the firm. The entire transaction was looked after by applicant No.1. Applicant No.2 Heena suffers from ailments. Applicant No.2 Heena is willing to deposit the amount of Rs.68,00,000/- without prejudice to the rights and contention of the applicants. Hence, the liberty of applicant No.2 be protected.

6. Ms. Rao, the learned APP and Mr. Jha, the learned Counsel for the first informant, resisted the prayer for pre-arrest bail to applicant No.2 Heena, as well. It was submitted that as applicant No.2 Heena is indisputably a partner of the firm M/s. Heena Corporation, she cannot wriggle out of the situation especially having regard to the nature of the accusation against the applicants.

7. I have given careful consideration to the submissions canvassed across the bar. I have also perused the material on record. *Prima facie,* it appears that after the demise of Deepak, the husband of applicant No.2, applicant No.1 – accused No.1 was managing the affairs of the firm M/s. Heena Corporation predominately. The allegations are primarily centered around the acts and omissions of accused No.1 Mihir. Applicant No.2 is a woman. Applicant No.2 has shown willingness to deposit the amount which according to the applicants is due and payable to the first informant, albeit without prejudice to their rights and contentions. In the circumstances, whether the allegation of forgery of the registration certificate purportedly issued by MahaRERA is attributable to applicant No.2 Heena Shah, would be a matter for investigation. I am, therefore, inclined to protect the liberty of the applicant subject to applicant No.2 depositing the amount as undertaken, without prejudice to the rights and contentions of the parties.

8. Hence the following order:

: O R D E R :

(i) Application of applicant No.1 stands dismissed as withdrawn.

(ii) As undertaken, applicant No.2 shall deposit the amount of Rs.10,00,000/- within a period of three weeks and a further sum of Rs.58,00,000/- within a period of six weeks thereafter.

(iii) Subject to aforesaid deposit, in the event of arrest of applicant No.2 in CR No.343 of 2024 registered with Santacruz Police Station, Mumbai, she be released on bail on furnishing a PR Bond in the sum of Rs.30,000/- with one or two surety in the like amount.

(iv) Applicant No.2 shall not tamper with the prosecution evidence and/or give threat or inducement to the any of the prosecution witnesses.

(v) Applicant No.2 shall cooperate with the investigation and attend Santacruz Police Station on 6th 7th and 8th May, 2024, between 10.00 a.m. to 1.00 p.m. and, thereafter, as and when directed.

Stand over to 13th June, 2024.

[N. J. JAMADAR, J.]