IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1055 OF 2024

1. Mihir Deepak Shah
   (Application dismissed as withdrawn)
2. Heena Deepak Shah ...Applicants

Versus

State of Maharashtra ...Respondent

WITH
INTERIM APPLICATION NO. 2164 OF 2024

Kamlesh Ghanshyam Lohia ...Intervener/ Applicant

In the matter between
Mihir Deepak Shah & anr. ...Applicants

Versus

State of Maharashtra ...Respondent

Mr. Sahil Mahajan, a/w Saurabh Godbole, for the Applicant.
Smt. Mahalaxmi Ganapathy, APP for the State/Respondent No.1.
Mr. Subhash Jha, a/w Neha Balani, Apeksha Sharma and Siddharth Jha, i/b Law Global, for the Intervener.

CORAM: N. J. JAMADAR, J.
DATED: 12th AUGUST, 2024

ORDER:-

1. Heard the learned Counsel for the parties.

2. This is an application for pre-arrest bail in connection with CR No.343 of 2024 registered with Santacruz Police Station, Mumbai, for the offences 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 ("MOFA").

3. When this application was listed before this Court on 26th April, 2024, Mihir Deepak Shah (A1) sought leave to withdraw the application. Thus the application qua Mihir Deepak Shah (A1) stood dismissed as withdrawn.

4. Heena Shah (A2), for whom the application survives, has shown willingness to deposit an amount of Rs.68,00,000/- without prejudice to her rights and contentions. Thereupon, this Court had granted interim bail to the applicant subject to deposit of the aforesaid amount. Applicant No.2 deposited a sum of Rs.10,00,000/- only. The balance amount was not deposited, as undertaken.

5. On 29th July, 2024 a statement was made on behalf of Heena Shah (A2) that applicant No.2 could not deposit the balance amount of Rs.58,00,000/-, as undertaken and, thus, the interim protection in favour of applicant No.2, ceased to operate.

6. Mr. Sahil Mahajan, the learned Counsel for the applicant, submitted that notwithstanding the inability of applicant No.2 to deposit the amount, as undertaken, in the facts of the case, applicant No.2 deserves pre-arrest bail.

7. Smt. Ganapathy, the learned APP and Mr. Jha, the learned Counsel for the first informant, stoutly resisted the prayer for pre-arrest bail. It was submitted that this Court had clearly expressed its disinclination to entertain the prayer for pre-arrest bail of both the accused. However, since the applicant No.2 volunteered to deposit the amount of Rs.68,00,000/-, interim protection was granted to applicant No.2. Therefore, the applicant No.2 is not entitled to again seek pre-arrest bail on merits.

8. In the backdrop of the aforesaid submissions, it may be appropriate to note the circumstances in which interim protection was granted to the applicant No.2. In the order dated 26th April, 2024, this Court had noted the nature of the indictment against the applicants, *prima facie* view of the Court with regard to those allegations and the submissions made on behalf of the applicant, especially applicant No.2, which persuaded the Court to grant interim protection subject to the deposit of the amount of Rs.68,00,000/-, as undertaken. The observations in paragraphs 3 to 7 read as under:

> “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."

9. Evidently, the submission on behalf of the applicant No.2 that she was willing to deposit an amount of Rs.68,00,000/-, without prejudice to her rights and contentions, primarily weighed with this Court in protecting the liberty of applicant No.2. I am conscious of the fact that the failure of an accused to make the deposit of the amount, as undertaken, by itself, cannot be a ground to reject the prayer for bail outright. It is for this reason, the Court considered it appropriate to hear the applicant on merits of the matter despite the submission on behalf of the applicant No.2 that it could not deposit the amount, as undertaken.

10. Nonetheless, the nature of the accusation cannot be lost sight of. *Prima facie,* it appears incontrovertible that applicant No.2 is the partner of the firm M/s. Heena Corporation. It is not a mere case of failure to perform the promise. There are elements which bear upon the dishonest intention of the accused. Had it been a case of mere non-delivery of possession of the flat, as promised, different considerations would have come into play. Not only the accused failed to execute a conveyance in favour of the informant but also the accused brazenly executed a conveyance in respect of the very same flat in favour of a third party. What exacerbates the situation is the allegation that the applicants had forged the Certificate of Extension of Registration of Project purportedly issued by Maharashtra Real Estate Regulatory Authority ("MahaRERA").

11. Mr. Mahajan attempted to salvage the position by canvassing a submission that the forgery of the said certificate, even if the allegations are taken at par, does not fall within the dragnet of the offence punishable under Section 467 of the Penal Code as such certificate cannot be said to be a valuable security. Reliance was placed on an order passed by a Division Bench of this Court in the case of ***Dr. Swapna Patkar vs. The State of Maharashtra and ors.***[1]***,*** wherein this Court had recorded a *prima facie* view that the Ph.D. certificate, which was

1 WP/2281/2021.

allegedly forged, does not fall within the ambit of the definition of the term 'valuable security'.

12. I am afraid, the aforesaid submission merits acceptance unreservedly. A Certificate for Extension of Registration of Project issued by the MahaRERA cannot be said to a document which is inconsequential. Under the regime of ushered in by the RERA, no builder can commence and continue a project without registration. Allegations of forgery of the certificate purportedly issued by MahaRERA cannot be brushed aside lightly. Innocent and unsuspecting purchasers act on the basis of the certificate of registration issued by MahaRERA. The fact that on the strength of such certificate the developer would represent to the world that he is entitled to receive money for the project in respect of which such certificate has purportedly been issued, would bear upon the question as to whether an offence under Section 467 of the Penal Code can be said to have been made out. I am, therefore, not inclined to agree with the submission of Mr. Mahajan that the forgery of such certificate would not fall within the tentacles of the offence punishable under Section 467 of the Penal Code.

13. Whether the applicant is the author of the said forgery, is a matter for investigation. This Court had considered the aspects of predominant allegations being against Mihir Shah (A1) and the applicant being a woman while granting interim protection, as the applicant had volunteered to make the deposit. In the face of the material on record, as the applicant No.2 is undoubtedly a partner of the firm M/s. Heena Corporation and had also executed the Agreement for Sale dated 9th November, 2021 in favour of the informant party, the reasons which weighed with this Court in declining to entertain the plea of pre-arrest bail of Mihir Shah (A1) also govern the claim of Heena Shah - applicant No.2.

14. In the aforesaid view of the matter, the custodial interrogation of applicant No.2 also seems warranted to facilitate further investigation and unearth the fraud in all its facets.

15. Hence the following order:

: O R D E R :

(i) Application stands rejected.

(ii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

Application disposed.

In view of disposal of ABA/1055/2024, IA/2164/2024 stands disposed.

[N. J. JAMADAR, J.]