CHITRA SANJAY SONAWANE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No.1374 of 2024

1. Suresh Rambhau Gaikwad
Age : 36 years, Indian Inhabitant,
Residing at Room No.368, Chembur
colony, Near Hanuman Temple,
opp. Barrack No. T 182, Indira Nagar
Chembur, Mumbai-400074

2. Kusum Rambhau Gaikwad
Age : 76 Years, Indian Inhabitant
R/at Rambhau Gaikwad, Jinti Gaikwad
Vasti, Tal.Karmala, Jinnti, Solapur,
Maharashtra 413203.

3. Devidayal Gupta
Age : 38 Years, Indian Inhabitant
R/at : Sohanlal Gupta, Hex 195423
Mithwala Chawl, D'mello
compound, Datta Mandir road,
Vakola, Santacruz East, Mumbai,
Maharashtra-400055 … Applicants.

Versus

1. The State of Maharashtra
2. Hitesh Anil Khuman
Age : 29 Years,
R/at Mogal lane, Shivraj Society,
Mahim, Mumbai-16 … Respondents

Mr Chaitanya Pendse a/w Chandrabhushan Y. Shukla a/w Ashok Yadav a/w Mr Vaibhav D. Kadam a/w Mr Shrinath Badade a/w Mr Kalpesh Karkera for applicants.

Ms Pallavi Dabholkar, APP for State.
Mr Rishikesh Dube, for respondent No.2/complainant.
PI Nandkishor Jadhav Kalachowki police station present.

Coram : R. N. Laddha, J.
Date : 14 June 2024.

P.C. :-

Heard Mr Chaitanya Pendse, the learned Counsel appearing on behalf of the applicants, and Ms Pallavi Dabholkar, the learned Additional Public Prosecutor appearing on behalf of the respondent/ State and Mr Rishikesh Dube, the learned Counsel for the complainant.

2. This is an application for pre-arrest bail filed by the applicants, who are apprehending arrest in CR No.93 of 2024, registered at Kalachowki Police Station, Mumbai, for offences punishable under Sections 420, 467, 468, 471 read with 34 of the Indian Penal Code.

3. The prosecution alleges that the applicants, on the false pretext of the redevelopment of Lakshmi Building situated at Cotton Green, Mumbai, sold room no.43 to the first informant for Rs.30 lakhs. The applicants proceeded with this sale despite knowing the authorities refused the redevelopment permission. They also falsely demonstrated to the first informant that the possession of the room was with

applicant No.2 when, in fact, it was with the police department. Pursuant to these representations, the applicants transferred their tenancy rights in the room through a tenancy agreement in favour of the first informant but did not hand over the possession of the room to the first informant. Additionally, the applicants refused to return the consideration. This triggered the first informant to lodge the present crime.

4. Mr Chaitanya Pendse, the learned Counsel, appearing on behalf of the applicants, submits that the applicants are falsely implicated in the crime. He submits that in 1940, by an Indenture of Lease, the Bombay Port Trust granted leasehold rights of the land on which the building stands in favour of one Marutirao Borade, who is the father of applicant No.2 and grandfather of applicant No.1. Under this lease, Marutirao was granted rights to construct a building (now known as Lakshmi building) and sub-lease the premises therein. On his demise, the legal representatives of Marutirao released their leasehold rights in favour of applicant No.2. The learned Counsel contends that since applicant No.2 was unaware of her father's dealings, she repeatedly called upon the police department to furnish necessary documents to show

the creation of tenancy. However, no response was received to these letters. This prompted the applicants to raise queries through RTI; in response, it was revealed that some purported rent receipts existed. However, these receipts were never supplied to the applicants. Moreover, in 2022, the police department transferred Rs.4770/- towards the rent for October 2020 to December 2020 to one of the legal representatives of Marutirao, who had already relinquished his right in favour of applicant No.2.

5. The learned Counsel asserts that while the police department claims to be in possession of the room, no documents are produced to substantiate that claim. As a result, the applicants addressed correspondences calling upon the police department to vacate the premises. According to the learned Counsel, the first informant, after making enquiries, agreed to rent the premises, and to that effect, a tenancy agreement was also executed, and Rs.30 lakhs was deposited towards a security deposit. The applicants also handed over the possession of the premises to the first informant. He submits that at the instigation of the police department, this crime was lodged. He further submits that the dispute is civil in nature, and the transaction is given a

criminal colour. The applicants are ready to accommodate the first informant by providing alternate premises. If the first informant does not wish to reside in the premises, the applicant is ready to deposit Rs.30 lakhs before the trial Court and cancel the tenancy agreement.

6. Conversely, Ms Pallavi Dabholkar, the learned Additional Public Prosecutor, appearing on behalf of the respondent/State, submits that the applicants have, by deceit, obtained a substantial amount from the first informant. This sum was received by applicant No.2 in her bank account, which evidences her active participation in the crime, along with the co-accused. The investigation revealed that the applicants also duped other victims. The learned APP further submits that the police personnel occupy the room, and rent is paid to the landlord. Despite this, the applicants transferred the tenancy rights to the first informant. The custodial interrogation of the applicants is required. Moreover, if these applicants are released on bail, they may tamper with the evidence and influence the witnesses.

7. Mr Rishikesh Dube, the learned Counsel, appearing on behalf of respondent No.2/ first informant, submits that after the finalisation of the transaction, it was agreed between the

parties that the possession of the premises would be handed over after carrying out necessary repairs. On instructions, he submits that the first informant is ready to cancel the tenancy agreement if the deposit amount of Rs.30 lakhs is returned to him by the applicants.

8. Upon perusal of the record, it appears that the land and the building in question are owned by the Bombay Port Trust and leased in favour of Marutirao Borade. Applicant No.2 has subsequently acquired the leasehold rights. The record reveals that applicant No.2 repeatedly called upon the department to vacate the premises. *Prima facie,* the genesis of the offence appears to be civil in nature, and the entire case hinges on documentary evidence. Moreover, the applicants are ready to deposit the amount of Rs.30 lakhs paid by the first informant towards the security deposit for the room before the trial Court. In this backdrop, the custodial interrogation of the applicants is not necessary. The apprehension of the prosecution that the applicants may tamper with the evidence/witnesses can be addressed by imposing appropriate conditions. Accordingly, this Court is inclined to allow the present application on the following terms:

(I) In the event the applicants are arrested in

connection with CR No.93 of 2024, registered at Kalachowki Police Station, Mumbai, they shall be released on bail on furnishing a PR Bond of Rs.25,000/- each with one or more sureties in the like amount, subject to the condition that the applicants deposit a sum of Rs.30 lakhs in the trial Court within two weeks from the date of uploading of this Order.

(II) The applicants shall attend the police station as and when required.

(III) The applicants themselves or through any other person shall not indulge in any activities that would tamper with the evidence or influence the witnesses.

10. The application stands disposed of in the above terms.

[R. N. Laddha, J.]