IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1895 OF 2024

1. Mayur Shankarlal Oswal
2. Mahesh Shankarlal Oswal
3. Mehul Shankarlal Oswal … Applicants

Versus

The State of Maharashtra … Respondent

******

Mr. Aniket U. Nikam a/w Amit Icham and Satyajeet Mane for the Applicants.
Mr. Tanveer Khan, APP for Respondent-State.
Mr. B. R. Maurya for Intervenor/Complainant.
API - Sunil A. Powar, Lonavala City Police Station.

******

CORAM: MANISH PITALE, J.
DATE : 16th JULY 2024

P.C. :

. Heard learned counsel for the applicants, learned APP for respondent-State and learned counsel having instructions to appear for the first informant.

2. The applicants are apprehending arrest in connection with FIR No. 0129 of 2024 dated 2nd April 2024 registered at Lonavala Police Station, Pune, for offences under Sections 406 and 420 of the Indian Penal Code, 1860 (IPC).

3. The grievance of the informant is that he had entered into a registered transaction with the original owner of a piece of land in the form of an agreement for sale dated 5th July 2013, wherein he

had paid initial amount of Rs.1,13,50,000/- for the agreed total consideration of Rs.9,00,00,000/-. It is further the case of the informant that he paid substantial cash amounts to the original owner and it was subsequently found that the area of the subject land was less and in that context, he had approached the original owner to rectify the situation.

4. It is alleged that in such circumstances, the original owner executed a registered document and entered into a transaction with regard to the very same land with the applicants before this Court who are brothers, and the land has been sold for a mere Rs.21,00,000/-. On this basis, only the applicants were named as accused persons when the FIR was registered on 2nd April 2024. This Court is informed that subsequently the original owner has also been added as accused person.

5. The Sessions Court rejected the anticipatory bail application of the applicants, *inter alia,* relied upon the statement of the informant that the land had been subsequently sold to the applicants for a paltry sum of Rs.21,00,000/-, despite the fact that the original owner had executed registered agreement for sale dated 5th July 2013 with the informant for an agreed consideration of Rs.9,00,00,000/-.

6. The learned counsel for the applicants submits that in the present case, the ingredients of the offences under Sections 406 and 420 of the IPC cannot be said to be made out against the

applicants. It is submitted that a civil dispute is being given a colour of criminality and that in any case, criminality cannot be alleged against the applicants in the facts of the present case.

7. Attention of this Court is invited to the registered documents executed by the original owner titled as deed of conveyance in favour of the applicants. Reference is made to the payment schedule and cheques along with bank statements, showing that an amount of Rs.1,36,92,588/- has been paid to the original owner and that balance amount has to be paid as per the payment schedule. Attention of this Court is invited to the fact that the informant has filed Special Civil Suit No. 19 of 2024 against the original owner and the applicants, seeking specific performance against original owner and for cancellation of the deed of conveyance executed in favour of the applicants. It is submitted that application at Exhibit 5 is pending before the Civil Court. In this regard, it is submitted that since the applicants are ready to cooperate with the investigation, this Court may allow the present application.

8. On the other hand, the learned APP, at the outset, submits that one of the applicants i.e. applicant No.1 has criminal antecedents, as there are two criminal cases pertaining to the years 2015 and 2016, pending against him. It is submitted that in the present case, the applicants entered into the aforesaid transaction with the original owner, knowingly full well about the fact that she had duped the informant. It is submitted that therefore, the

custody of the applicants is required.

9. The learned counsel having instructions to appear on behalf of the first informant, submits that he may be given time to apprise this Court about the facts in the matter. He submits that in any case, the applicants are known to be persons indulging in such activities of entering into transactions with the owners, who have already parted with the lands and therefore, no indulgence may be shown to the applicants.

10. This Court has considered the material on record in the backdrop of the rival submissions.

11. The documents on record show that an agreement for sale dated 5th July 2013 was executed between the original owner and the informant, whereby the original owner agreed to sell the subject land for a consideration of Rs.9,00,00,000/-. The receipt at page 54, which forms part of the agreement for sale, shows that the original owner has acknowledged receipt of Rs.1,13,50,000/- from the informant. In the written statement filed in response to the suit filed by the informant, the original owner has asserted that the informant had taken back amount of Rs.25,00,000/- and that therefore, the original owner has received only Rs.88,50,000/- from the informant. It is further the claim of the informant that he had paid substantial amount of about Rs.2,84,00,000/- in cash to the original owner.

12. The documents on record also show that the registered deed of conveyance is executed on 10th January 2024 by the original owner in favour of the applicants in respect of the very same land. The details of the cheques and the entries in the bank accounts of the applicants do show that they had paid the amount of Rs.1,36,92,588/- to the original owner in the context of the aforesaid registered deed of conveyance.

13. It is also a matter of record that the informant has already filed the aforementioned civil suit before the competent Civil Court, seeking a decree of specific performance against the original owner in respect of the agreement of sale executed in favour of the informant and he has also prayed for cancellation of the deed of conveyance executed in favour of the applicants. The application seeking temporary injunction i.e. Exhibit 5 is pending consideration before the Civil Court. The order dated 14th March 2024 shows that the applicants and the original owner have been granted time to file reply to the application at Exhibit 5 and that, as on today, there is no interim order in favour of the applicant. It is significant that after the order dated 14th March 2024 was passed, the informant approached the Police, leading to registration of FIR on 2nd April 2024.

14. In these circumstances, this Court is of the opinion that a *prima facie* case is indeed made out by the applicants in their favour to claim that ingredients of the offences under Sections 406 and 420 of the IPC, are not made out against them. The informant

has a grievance against the original owner, in as much as he feels cheated because the original owner has not honoured her commitment under the agreement of sale deed 5th July 2021, despite allegedly having received substantial amounts from the informant. But, this Court finds that such allegations pertaining to criminal brach of trust and cheating *prima facie* cannot be said to be available against the applicants. In any case, the informant has already approached the competent Civil Court and the civil suit along with application for temporary injunction are pending.

15. The applicants have been able to demonstrate that they have parted with valuable part consideration in the context of the registered deed of conveyance executed in their favour by the original owner. In such circumstances, this Court is of the opinion that the applicants have made out their case for granting relief in the present application. Merely because two criminal cases are pending against the applicant No.1 cannot be a ground to deprive him of relief, even though in the facts and circumstances of the present case, this Court finds that a *prima facie* case is made out by all the three applicants in their favour.

16. In view of the above, the application is allowed in the following terms :

> (a) In the event the applicants are arrested in connection with FIR No.0129 of 2024 dated 2nd April 2024 registered at Lonavala Police Station, Pune, they

shall be released on bail on furnishing PR Bond of Rs.50,000/- each and one or two sureties in the like amount to the satisfaction of the trial Court.

(b) The applicants shall remain present before the Investigating Officer on 19th July 2024 and thereafter, as and when required by the Investigating Officer. The applicants shall cooperate with the investigation.

(c) The applicants shall not tamper with the evidence of the prosecution in any manner. They shall not influence the informant, witnesses or any other person concerned with the case.

17. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicants in the present application.

18. The application is disposed of.

MANISH PITALE, J.