IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2072 OF 2024

Mohatarma Haji Bazgul Dinarkhel ...Applicant

Versus

The State of Maharashtra ...Respondent

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- Ms. Alisha Mohite i/b FF & Associates, for Applicant.
- Mr. J.P. Yagnik, APP for Respondent – State.
- Mr. B.R. Maurya, for informant / intervener.

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CORAM : MANISH PITALE, J.
DATE : 08th August, 2024.

P. C. :

1. Heard Ms. Mohite, learned counsel appearing for the applicant, Mr. Yagnik, learned APP for the State and Mr. Maurya, learned counsel having instructions to appear on behalf of informant.

2. The applicant is apprehending arrest in connection with First Information Report No.0129 of 2024, dated 02.04.2024, registered at Police Station Lonavala City, District Pune (Rural), for the offences under Sections 420 and 406 read with 34 of the Indian Penal Code (IPC).

3. The applicant is a woman aged about 69 years and she is one of the four accused persons in the present case. In the first instance when the FIR was registered names of only three accused persons were mentioned, but subsequently during the course of investigation, the applicant has also been

arraigned as an acccused.

4. The informant alleges that the applicant has committed the said offences for the reason that she entered into an agreement for sale of immovable property on 05.07.2013 and that while the informant was ready to abide by the terms of the agreement, it was found that there was a shortfall in the area of the subject property, which led to a dispute. It is alleged that huge amounts by way of cheque and cash were paid to the applicant and yet she did not abide by her obligations in terms of the agreement. It is further alleged that in this backdrop, behind the back of the informant, the applicant executed a registered deed of conveyance in favour of the co-accused persons on 10.01.2024. The informant alleged that in such circumstances, the applicant and the co-accused persons committed the aforesaid offences.

5. The learned counsel for the applicant at the outset, points out that this Court, by an order dated 16.07.2024 in Anticipatory Bail Application No.1895 of 2024, has granted anticipatory bail to the three co-accused persons i.e. the purchasers in terms of the deed of conveyance dated 10.01.2024.

6. It is further pointed out that in the present case, as per the said agreement dated 05.07.2013, the informant was required to pay amounts periodically. It is submitted that the allegations regarding cash amounts being

paid are denied by the applicant. It is further submitted that from the cheque amount of ₹ 1,13,50,000/-, an amount of ₹ 25,00,00/- was returned by the applicant to the informant and the balance amount was only ₹ 88,50,000/-. It is submitted that there was an error in recording in the aforesaid agreement about possession and in that context rectification deed was executed subsequently on 30.04.2014, wherein it was specifically recorded that the applicant as the vendor had not handed over possession of the said immovable property to the purchaser i.e. the informant.

7. It is further submitted that the applicant caused a notice to be issued to the informant on 17.10.2022, stating that the informant had failed to abide by the obligations in terms of the aforesaid agreement and with the efflux of time the agreement had lost its force. Attention is also invited to the reply sent to the said notice on behalf of the informant, wherein the issue about shortfall of area in the immovable property was raised. It was alleged by the informant that even after nine years of execution of the agreement, the applicant had failed to take steps for completion of the transaction and execution of the sale deed. It is submitted that in this backdrop it would be evident that a civil dispute arose between the parties and this is further manifested by the fact that the informant has filed a civil suit before the Competent Court, wherein the applicant is joined as defendant No.1 and the co-accused are shown as defendant Nos.2 to 4. The informant has prayed for

a decree of specific performance and other such relief. The application for temporary injunction is pending, wherein interim order has not been granted, while granting time to the defendants on 14.03.2024, to file their replies. It is submitted that immediately thereafter, on 02.04.2024, the informant has caused the registration of the FIR, thereby indicating that the civil dispute is being given the colour of criminality. On this basis, it is submitted that this Court may allow the present application.

8. On the other hand, learned APP has opposed the prayer made in the present application. He submits that the documents on record would indicate that the applicant never took any steps to abide by her obligations under the agreement executed with the informant. Instead, she went ahead to execute the deed of conveyance dated 10.01.2024 with the co-accused persons, thereby indicating her intention from the inception to cheat the informant. The documents available on record indicate that huge amounts were paid by the informant to the applicant. There are receipts issued by the applicant, acknowledging the receipt of huge cash amounts in respect of the said agreement. It is a matter of record that notices have been issued by the Income Tax Department to the applicant in that context, falsifying the claims made on her behalf in the present application. It is submitted that the applicant cannot claim parity with the co-accused persons as they are the subsequent purchasers, while the applicant is the person actively involved in

duping the informant.

9. The learned counsel appearing for the first informant supports the contentions raised by the learned APP.

10. This Court has perused the material on record. By order dated 16.07.2024, co-accused persons were granted anticipatory bail, *inter alia,* on the ground that the dispute between the parties *prima facie* appears to be a civil dispute.

11. It is a matter of record that the informant has already filed the aforementioned suit before the Competent Civil Court. On 14.03.2024, the Civil Court did not issue any interim order, while granting time to the defendants therein, including the applicant to file replies. Within days, the informant approached the police for registration of the subject FIR on 02.04.2024.

12. The agreement executed between the applicant and the informant on 05.07.2013, the rectification deed executed in the year 2014 and the other documents on record make out a *prima facie* case of there being a serious dispute between the parties, which *prima facie* appears to be of a civil nature. This is further bolstered by the fact that the informant has already approached the Civil Court and the matter is pending. A prayer for grant of a

decree of specific performance is made in respect of the very agreement dated 05.07.2013. The documents on record also indicate that while the applicant claimed that the informant failed to abide by his obligations under the said agreement. The informant on the other hand raised a dispute about alleged shortfall in the area of the subject land. In such circumstances, it can be said that *prima facie* the FIR appears to have been registered to give colour of criminality to a dispute that appears to be of civil nature.

13. Even otherwise, the evidence in the present case is necessarily documentary in nature, which may not require the physical custody of the applicant.

14. The applicant is a woman aged about 69 years and being a senior citizen, she has been able to make out a case in her favour as regards lack of necessity to take her physical custody, as long as she is ready to cooperate with the investigation.

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

(A) In the event the applicant is arrested in connection with FIR No.0129 of 2024, dated 02.04.2024, registered at Police Station Lonavala City, District Pune (Rural), for the offences under Sections 420 and 406 read with 34 of the

Indian Penal Code (IPC), she shall be released on bail on furnishing P.R. Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.

(B) The applicant shall remain present before the Investigating Officer on 16.08.2024 and 17.08.2024 between 10:00 a.m. and 12:00 noon and thereafter as and when called by the Investigating Officer. She shall cooperate with the investigation.

(C) The applicant shall not tamper with the evidence in any manner. She shall not influence the informant, witnesses or any other persons concerned with the case.

16. Needless to say, violation of any of the aforesaid conditions may lead to cancellation of the present order.

17. It is also clarified that the observations made in this order are limited to the disposal of the present anticipatory bail application and the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

18. The application is disposed of.

(MANISH PITALE, J.)