IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2113 OF 2024

Gangji Dharamshi Gothi ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Abhishek Yende i/b. Mr. Rishikesh Dube, for the Applicant
Smt. Mahalaxmi Ganapathy, APP for the State.
Mr. Subhash Jha a/w. Ms. Neha Balani, Mr. Sumeet Upadhyay, Mr. Deepesh Shahani, Ms. Apeksha Sharma and Mr. Siddharth Jha and Mr. Rajlaxmi i/b. Law Global, for the Intervener.
Mr. Balasaheb Todkar, Santacruz police station.

CORAM : N. J. JAMADAR, J.
DATE : AUGUST 29, 2024

P.C.:

1. Heard the learned counsel for the parties.

2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 343 of 2024 registered at Santacruz police station for the offences punishable under sections 420, 465, 468, 471 read with 34 of Indian penal Code, 1860 and section 4 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

3. Mihir Shah(A/1) and Heena Shah (A/2) are the partners of Heena Lifestyles. Mihir Shah(A/1) and Heena Shah (A/2) and Dipak Shah, the father of Mihir Shah(A/1) had allegedly induced the first informant Kamlesh Lohiya, his mother Sulochana Lohiya and wife Shweta Lohiya to part with an amount of Rs. 1,67,50,000/-

by making a false representation that they would sell a flat in a project then being developed at Dipak Building, S.V. Road, Santacruz (w), Mumbai. Mihir Shah(A/1) and Heena Shah (A/2) went on to make repeated representations to sell one flat in lieu of another to the first informant and his family members. Eventually, Mihir Shah(A/1) and Heena Shah (A/2) executed an Agreement for Sale in favour of the first informant and later on, Mihir Shah(A/1) and Heena Shah (A/2) executed a conveyance in respect of Flat No. 404, Dev-Gokul Mohan Building, Plot No. 71, Santacruz (w), Mumbai 54 (the subject flat) in favour of the applicant. Mihir Shah(A/1) and Heena Shah (A/2) and the applicant, thus, duped the first informant and his family members. It was further alleged that accused had forged a certificate of registration of the project purportedly issued by MahaRera though the registration had already lapsed.

4. Mr. Abhishek Yende, the learned counsel submitted that the allegations of cheating and forgery are primarily against Mihir Shah(A/1) and Heena Shah (A/2). The applicant was not privy to the alleged fraud. The applicant had bonafide purchased the subject flat from Mihir Shah(A/1) and Heena Shah (A/2), unaware of the prior transactions and the orders passed by Court. Therefore, the applicant deserves pre-arrest bail.

5. The learned APP resisted the prayer for pre-arrest bail. It was submitted that had it been a case of the applicant being a bonafide purchaser for value without notice, the aforesaid submission on behalf of the applicant would have carried some substance. However, the material on record indicates that the subject flat was transferred in favour of the applicant, fraudulently, with a view to defeat the order of attachment passed by the learned Magistrate under section 421 of the Code of Criminal Procedure, 1973, for recovery of the amount ordered to be paid in a complaint under section 138 of Negotiable Instruments Act, 1881. The learned APP submitted that the documents on record would indicate that the Sale Deed is a sham and bogus document executed with a view to overreach the order of attachment of the subject flat passed by the learned Magistrate. Therefore, the applicant does not deserve the relief of pre-arrest bail.

6. Mr. Jha, learned counsel for the Intervener, submitted that the copies of the invoices (Exhibit D) purportedly raised for the service rendered by the applicant in Gokul Vaibhav project prima facie appear to be false and fabricated. No amount has been paid towards CGST and SGST. To bolster up the case that the subject flat was sold for consideration formed by charges for the services allegedly rendered by the applicant, fabricated invoices have been

placed on record. The transaction of sale of the subject flat between Mihir Shah(A/1) and Heena Shah (A/2) and the applicant appears to be ex facie fraudulent. Therefore, the custodial interrogation of the applicant is warranted.

7. I have carefully perused the allegations in the FIR and the documents annexed to the application.

8. As noted above, the applicant has been arraigned as the person who fraudulently purchased the subject flat despite the same having been attached pursuant to an order passed by the learned Magistrate towards recovery of the amount ordered to be paid under Negotiable Instruments Act, 1881.

9. Had the matter remained in the arena of purchase of the subject flat sans knowledge of the previous transaction in respect of the subject flat or order of attachment, the Court would have been justified in exercising the discretion in favour of the applicant as it could be urged that the dispute was primarily between Mihir Shah(A/1) and Heena Shah (A/2) and the first informant. However, there are few concomitant circumstances which show prima facie complicity of the applicant.

10. First, it is pertinent to note, the applicant claimed that the consideration for the purchase of the subject flat was formed by the amount which the Mihir Shah(A/1) and Heena Shah (A/2) owed to

the applicant towards the works contract executed by the applicant for Heena Lifestyles project Gokul Vaibhav. Reliance is sought to be placed on the invoices which were raised in the year 2018 and 2019. A M.O.U. purportedly executed on 19th August, 2017 has been pressed into service to bolster up the case that Heena Lifestyles had entered into a contract with the applicant's firm 'Ambika Developers' to execute internal and furnishing work in the flats to be developed by Heena Lifestyles. Evidently, the applicant had not parted with any consideration, and the consideration for the subject flat was sought to be adjusted towards the amount allegedly due and payable by Heena Lifestyles to the applicant.

11. Secondly, the time factor assumes significance. Prima facie, on the own showing of the applicant, the works contracts were executed in the month of May, 2018 and May, 2019. The Sale Deed was executed on 10th May, 2023. In the meanwhile, on 10th March, 2023, the learned Magistrate had passed an order of attachment of the subject flat towards recovery of the amount ordered to be paid under section 143A of the Negotiable Instruments Act, 1881, under section 421 of the Code of Criminal Procedure, 1973. Under two months of the said attachment order, the Sale Deed came to be executed in favour of the applicant.

12. At this stage, the crucial question that wrenches to the fore is

whether the applicant had knowledge of the said attachment. Mr. Yende submitted that the applicant was unaware about the proceedings and the order of attachment. It was further urged that the subject flat was in the possession of the applicant since the year 2019 and the applicant had inducted a licensee therein. Thus, the applicant was not aware of the order of attachment.

13. The material on record, however, shows to the contrary. On 18th April, 2023, the Circle Officer, Bandra had addressed a communication to the applicant, purportedly in response to the letters addressed by the applicant to Tahsildar, Andheri and Talathi Saja, Vileparle, in respect of subject flat. The Circle Officer informed the applicant that he had not produced any document showing his right, title and interest in the subject flat. Thus, to implement the order of attachment passed by the learned Magistrate the applicant was called upon to vacate the subject flat within two days.

14. On 24th April, 2023 Tahsildar, Andheri again addressed a communication to the applicant apprising him that he had not submitted any document in respect of his claim and, therefore, the application submitted by the applicant on 20th April, 2023 was filed. The applicant was called upon to vacate the subject flat. Yet, on 10th May, 2023 a registered instrument of sale came to be executed by Mihir Shah(A/1) and Heena Shah (A/2) in favour of the applicant.

The aforesaid communications belie the claim of the applicant that he was not aware of the order of attachment.

15. The situation which thus obtains is that, prima facie, a brazen attempt was made to defeat the order of attachment by executing an instrument of transfer of the subject flat despite being fully cognizant of the order of attachment. The fact that a RERA certificate was allegedly forged and the consideration for the said sale transaction was sought to be adjusted towards the amount Mihir Shah(A/1) and Heena Shah (A/2) allegedly owed to the applicant for the works contract allegedly executed by the applicant in the year 2018 and 2019 cumulatively indicate that the applicant was privy to the fraud.

16. In the aforesaid backdrop, I find it rather difficult to accede to the submission of Mr. Yende that the applicant was bonafide purchaser for value without notice. On the contrary, the very fact that the transaction was for a valuable consideration appears debatable. Likewise, there is positive material to show that the applicant had knowledge of the attachment order.

17. In this view of the matter, the custodial interrogation of the applicant is warranted to unearth the fraud in all its facets and have effective investigation. I am, therefore, not inclined to exercise discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands rejected.

2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)