IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3643 OF 2023

Subedar Ahmed Shaikh ...Applicant

versus

The State of Maharashtra .... Respondent

WITH
INTERIM APPLICATION NO.1794 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.3643 OF 2023

Mohammed Zaid Akbar Khan ...Intervener
IN THE MATTER BETWEEN
Subedar Ahmed Shaikh ...Applicant

versus

The State of Maharashtra and Anr. .... Respondent

Mr. Amin Solkar a/w Adv. Faiza Gawandi a/w Adv. Isma Ishtiyaq a/w Adv. Gaurav Shenoy for the Applicant.
Smt. M. R. Tidke, APP for the State/Respondent.
Mr. Abdul Mannan Parvez Ansari for the Intervener.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th SEPTEMBER 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with

C.R. No.151 of 2023 registered at Pydhonie Police Station on 29th July 2023 under Sections 420, 465, 467, 468, 471, 504, 506 of IPC.

2. Heard Mr. Amin Solkar learned counsel for the Applicant. Ms. M. R. Tidke, learned APP for the State. Mr. Ansari for the Intervener.

3. The FIR is lodged by one Mohammed Zaid Akbar Khan. He has stated that he was knowing the Applicant since 30 years. In November 2022, the informant told the Applicant that he wanted to purchase a room. The Applicant allegedly told the informant that he wanted to sell his own house at Room No.16, 5th Floor 229/231 Parvez Mansion, Narshi Nath Street Masjid Bandar.

4. Informant showed willingness to purchase that flat. The Applicant quoted the price of Rs.28,00,000/-. He asked for the token amount of Rs.14,00,000/-. The informant had accepted that proposal. The FIR goes on to mention that in all, he paid the amount of Rs.93,000/- by bank transaction and rest of the amount was given through cash transaction. It is his case

that on 19th November 2022, the Applicant gave documents to the informant showing that the said room was taken by the Applicant from one Bano Sayyad. After that the Applicant did not give possession to informant. He also did not complete the execution of the documents. Instead, both of them entered into an MOU mentioning that the Applicant had taken a friendly loan from the informant. For executing that MOU two cheques for Rs.7,00,000/- each bearing Nos. 002796 and 002797 issued on DCB Bank were given to the informant.

5. After execution of that document, the informant again asked the Applicant regarding the execution of the documents and sale of that flat. At that time, the Applicant told the informant that the flat owner was not willing to complete the transaction and was demanding more money. The informant then demanded refund of his money given to the Applicant. The Applicant refused and told the informant that he had invested that amount in a project. After that, the Applicant sought some time for returning that amount. The informant came to know that the said room was not owned by the Applicant. On 20th

June 2023, the informant met husband of Bano Sayyad and asked about the room. At that time, the Bano Sayeed's husband showed him the documents regarding that room and told the informant that the rent receipt and the agreement showing signatures of Bano Sayyad given by the Applicant to the informant were forged. He further told the informant that the Applicant had taken money from others for the same room. The informant tried to contact the Applicant. The informant deposited the cheques in his bank on 23rd June 2023. They were dishonoured for insufficiency of funds. He realized that he was cheated and the present FIR was lodged on 29th July 2023.

6. Learned counsel for the Applicant submitted that the complainant was a money lender and there was no transaction of sale or purchase of flat. The Applicant had taken Rs.3,93,000/- as loan amount between January 2021 and January 2022. He had repaid more that Rs.14, 00,000/- in cash and had paid Rs.4,50,000/- in the complainant's bank account and his brother's bank account. He submitted that the intervention application filed by the informant itself shows that

a memorandum of understanding was executed between the parties. It was purportedly executed in November 2022. He submitted that there was specific clause about the steps which could be taken for not refunding the loan amount. It was purely a loan transaction. Learned counsel further submitted that, infact, the signatures appearing on that MOU is not of the Applicant. It is a forged signature. He submitted that the story in the FIR is contrary to the averments in the MOU.

7. The informant has not taken any steps to initiate proceedings under Section 138 of the NI Act. It shows that the informant had no legally enforceable liability in respect of those cheques in his favour.

8. Learned counsel for the intervenor submitted that the offence is clearly made out in the FIR. The complainant was a layman and therefore he was misled by the Applicant in entering into an MOU instead of entering into a transaction for sale and purchase of the flat. He submitted that the rent receipt given by the Applicant to the informant was a forged rent receipt. The Applicant has similarly cheated other victims and

has also cheated the government. He submitted that since it is a serious offence, it requires custodial interrogation.

9. Learned APP, on instructions, stated that the investigation has not revealed that there are any other victims who are similarly cheated by the Applicant. On other aspects she supported the arguments of the learned counsel for the informant/ intervenor.

10. I have considered these submissions. I find force in the submissions of the learned counsel for the Applicant that, if it was really a transaction for sale and purchase of the flat, the informant would not have entered into an MOU mentioning that it was a loan transaction for the amount of Rs.14,00,000/-.

11. Learned counsel for the Applicant submitted that the Applicant's signatures on that MOU is forged. It is for the Investigating Agency to find out whether that signature is forged or not. It would be part of the investigation. But, since the first informant is relying on this MOU, I have considered the contents of the MOU.

12. The MOU refers to the aforesaid two cheques for

Rs.7,00,000/- each. However in the MOU itself the column for the date of the cheques are kept blank. It is important to note that after those cheques were dishonoured, the informant has not initiated any proceedings under Sections 138 of the Negotiable Instruments Act, 1881 (the NI Act). The FIR mentioned that those cheques were dishonoured in June 2023 and after that this FIR was lodged on 29th July 2023. There is no explanation offered as to why steps were not taken to lodge a complaint under Section 138 of the NI Act. The said MOU contains clause Nos. 5 and 6 which provides for the steps which the informant could take in case that loan amount of Rs.14,00,000/- was not repayed by the Applicant.

13. It was mentioned in those two clauses that the informant was entitled to approach Civil Court by filing a suit, for recovery of that amount. It was also provided that the informant could get his money as the Applicant was under the liability to sell the movable and immovable property or hand over the possession to the informant. From this MOU, it is clear that, it could be a civil dispute and not a criminal offence. The

informant has not taken any steps to file complaint under Section 138 of the NI Act.

14. Story in the FIR regarding the allegations of purported sale of flat and the forged rent receipt are entirely different from the averment in that MOU relied on by the informant himself. The FIR mentions that out of Rs.14,00,000/-, only Rs.93,000/- were given through bank transaction and rest of the amount was given in cash. There is no separate acknowledgment receipt for Rs.13,00,000/- paid in cash. For that purpose, the only document is the MOU which mentions a different story altogether. Considering these aspects, sufficient doubt is created about the informant's story. In any case it appears to be a civil dispute at the highest. Therefore, the Applicant's custodial interrogation is not necessary. He can be protected under Section 438 of the Cr.Pc. Hence, the following Order:

ORDER

a) In the event of his arrest in connection with C.R. No.151 of 2023 registered at Pydhonie Police Station, Mumbai, the Applicant is directed to be released on bail on furnishing PR bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

b) The anticipatory bail application is disposed of.

c) With the disposal of the anticipatory bail application the Interim Application No.1794 of 2024 for intervention of the informant is also disposed of as I have already heard the learned counsel for the informant.

(SARANG V. KOTWAL, J.)