IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2894 OF 2023

Snehal Shailesh Borana ...Applicant

Versus

State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 2402 OF 2024

Keshrimal C. Jain ...Applicant/ Intervener

In the matter between

Snehal Shailesh Borana ...Applicant

Versus

State of Maharashtra ...Respondent

Mr. Karan Rajput, i/b Jyoti Yadav, for the Applicant.
Mr. Priyal Sarda, for the Intervener.
Mr. Niteen Patil, APP for the State.

CORAM: N. J. JAMADAR, J.
DATED: 9th SEPTEMBER, 2024

ORDER:-

1. Heard the learned Counsel for the applicant, the learned APP for the State, and the learned Counsel for the Intervener.

2. The applicant, who apprehends arrest in CR No.729 of 2023, registered with Tilak Nagar Police Station, Mumbai, for the offences punishable under Sections 420, 465, 467, 468 and 471 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code") has preferred this application for pre-arrest bail.

3. On 18th October, 2023, this Court was persuaded to grant interim bail to the applicant observing *inter alia* as under:

> "3. The first informant is a jeweller. He became acquainted with the applicant as a customer. The applicant made a representation that she had known government officers and would procure rooms and shops under SRA Scheme at concessional rates over a period of time since the year 2017. The first informant, his son Manish and other relatives were induced to pay an amount of Rs.63,10,000/-. The applicant has allegedly shown the forged documents on a WhatsApp call. Neither the rooms and shops were delivered, as promised. Nor the amount, which the first informant, his son Manish and other relatives were made to part with, was repaid. The applicant has allegedly drawn 22 cheques. One of the cheques was dishonored on presentment. Hence, the report.
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> 7. I have perused the allegation in the FIR and the material on record including the additional affidavit of the applicant. *Prima facie* there is no material to make out a case for the offences punishable under Sections 465, 467 and 471 of the Penal Code as no false document is shown to have been prepared by the applicant. What is alleged is that on WhatsApp, copies of few documents were shown. *Prima facie* the said allegations do not sustain a charge for the offences punishable under Sections 465, 467 and 471 of the Penal Code.
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> 8. As regards the offence of cheating, the entire amount has allegedly been paid in cash over a period of time commencing from the year 2017. I have also perused the statements of the alleged victims. A common thread of the involvement Manish, the son of the first informant, runs through all these statements.
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> 9. Undoubtedly, the case of some sort of relationship between the applicant and Manish is a matter which the applicant would be required to substantiate, to bolster up her defence. However, at this stage, there is material to show that the relationship transcended commercial transactions.

> 10. The offence under Section 420 entails punishment which may extend upto seven years. The applicant is a woman. Therefore, I am inclined to protect the liberty of the applicant while directing her to join in the investigation. If the investigation reveals the complicity of the applicant, the said factor can be considered at the stage of final adjudication of the prayer for pre-arrest bail."

4. Mr. Rajput, the learned Counsel for the applicant, submitted that pursuant to the aforesaid order, the applicant has appeared before the Investigating Officer and cooperated with the investigation. Mr. Rajput reiterated that the applicant has been roped in as the applicant resisted her exploitation at the hands of the son of the first informant with whom the applicant was in a relationship. It was submitted that all the allegations of payment of amount in cash involve the first informant's son Manish Jain. In fact, Manish Jain had planted the alleged victims, who happen to be his relatives and friends.

5. The learned APP resisted the prayer for pre-arrest bail. It was submitted that the applicant had defrauded the first informant and the other victims of huge amount. The applicant has not rendered effective cooperation during the course of investigation. The victims have tendered the copies of the documents, which were delivered by the applicant. Those documents were found to be false and fabricated.

Therefore, custodial interrogation of the applicant is warranted.

6. Mr. Sarda, the learned Counsel for the first informant – applicant in IA/2402/2024, strongly opposed the prayer for pre-arrest bail. It was submitted that the applicant is a habitual offender. The applicant has been arraigned in the offences of cheating in CR No.332 of 2015 registered with Chembur Police Station and CR No.338 of 2017 registered with Nehru Nagar Police Station. Thus, having regard to the antecedents of the applicant, she does not deserve the discretionary relief of pre-arrest bail.

7. An endeavour was made by Mr. Sarda to draw home the point that the applicant had deceived as many as 15 persons by inducing them to part with the huge amount by making false representations that they would be provided rooms/ shops in SRA Projects at concessional rate. Attention of the Court was invited to the copies of the documents which are annexed to the affidavit of the intervener. It was submitted that those copies of the documents were delivered by the applicant. Mr. Sarda further submitted that the applicant had delivered as many as 20 cheques, which were produced before the police, during the course of investigation. If all these facts are considered cumulatively, according to Mr. Sarda, the intention of the applicant to deceive the unsuspecting persons becomes absolutely clear.

8. I have perused the material on record and the statements of the witnesses, recorded during the course of investigation, tendered by the learned APP. The gravamen of indictment against the applicant is that the applicant had induced the first informant and his relatives and friends to part with huge amount by making a false representation that she had known Government Officers and would procure rooms and shops under SRA scheme for them at concessional rates. In the process the applicant had allegedly created false documents and used the forged documents as genuine.

9. As noted in the interim order, extracted above, the allegation with regard to the forgery of the documents was that, the applicant had forwarded copies of documents on the mobile phone. It is in this backdrop, the Court was persuaded to record a *prima facie* view that the material on record did not sustain the charge for the offences punishable under Sections 465, 467 and 471 of the Penal Court. It does not appear that, post aforesaid order, any further material has been collected which makes out a strong *prima facie* case on this count. The statements of the witnesses proceed on the line that the copies of the documents were sent on mobile phone. Thus, the complicity of the applicant for the offences punishable under Sections 465, 467 and 471 of the Penal Code, *prima facie,* appears debatable.

10. I find substance in the submission of Mr. Rajput, the learned Counsel for the applicant, that the relationship between Manish Jain, the son of the first informant, and the applicant, in the least, transcended commercial transactions. It cannot be said to be a matter of coincidence that each of the alleged victims has stated that it was Manish Jain, who had made the initial representation that the applicant would procure rooms and shops at a concessional rate. One gets an impression that the statements of the victims are stereotypical.

11. At this stage, the probabilities of the case also deserve consideration. The victims were induced to part with the amount in the year 2016 – 2017. FIR came to be lodged in the year 2023. The statement of Manish Jain gives a further dimension to the transactions between the parties. In addition to the alleged inducement to part with the amount by making a false representation of procuring rooms and shops at concessional rates, Manish Jain has stated that the applicant had, over a period of time, induced him to part with gold ornaments weighing 1200 grams. Numerous instances of the applicant having either purchased or borrowed the gold ornaments, during period 2017 to 2020, have been reported by Manish Jain. It defies comprehension that a professional jeweller would succumb to such deceptive practices for over a dozen times. In the totality of the circumstances, if the material on record pressed into service on behalf of the applicant is taken into account, the submission on behalf of the applicant that the relationship between the applicant and Manish Jain transcended business dealings, prima facie, carries conviction.

12. I have perused the copies of the cheques, which were allegedly delivered by the applicant and produced by Mr. Jain before the police. First, the drawer of the few of the cheques is a different person. Second, few of the cheques are blank. That, prima facie, indicates that the genesis of the transactions has not been fully disclosed. In this context, the delay in lodging the FIR assumes significance.

13. It is true, two crimes have been registered against the applicant. However, the totality of the circumstances cannot be lost sight of. The offence under Section 420 entails punishment which may extend to seven years. Investigation has reached an advanced stage. The applicant is a woman. For the foregoing reasons, I am impelled to hold that the applicant has made out a *prima facie* case for exercise of discretion.

14. Hence, the following order:

: O R D E R :

(i) Application stands allowed.

(ii) Order of interim bail dated 18th October, 2023 is made absolute on the terms and conditions incorporated therein.

(iii) The applicant shall henceforth appear before the Investigating Officer as and when directed.

(iv) The applicant shall regularly attend the proceedings before the jurisdictional court.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for pre-arrest bail only.

ABA/2894/2023 stands disposed.

In view of disposal of ABA/2894/2023, IA/2402/2024 also stands disposed.

[N. J. JAMADAR, J.]