IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 83 OF 2015

Nursingha Charan D. Nayak ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Sachin Dhakephalkar for the Applicant

Mr. S. H. Yadav, A.P.P for the Respondent-State

Mr. Yuwraj Dhanraj Patil for the Original Complainant

API Mr. M. R. Palande from Nerul Police Station is present

CORAM : REVATI MOHITE DERE, J.

TUESDAY, 24TH MARCH, 2015

P.C. :

1. Heard learned Counsel for the applicant, the learned A.P.P for the respondent-State and the learned Counsel for the complainant.

2. By this application, the applicant seeks pre-arrest bail in connection with C.R. No. I-423 of 2014 registered with the Nerul Police Station, for the alleged offences punishable under Sections 420, 452, 341, 506(ii) r/w 34 of the Indian Penal Code.

3. The complainant is one Naresh Ramchand Punjabi. According to the complainant, he had purchased the flat premises from the present applicant, situated at Devdarshan Apartment, F-2, B-1, First Floor, Plot No. 6, Sector 11, Nerul, Navi Mumbai. According to the complainant, he had paid a sum of Rs. 21,00,000/- between the period 1st August, 2007 till 31st January, 2008. Out of Rs. 21,00,000/-, an amount of Rs. 1,00,000/- was paid by cash and rest of the amount was paid by separate cheques and postal orders. According to the complainant, the applicant had given a registered General Power of Attorney dated 16th September, 2008 to the complainant to do certain acts which included the power `to dispose of, transfer, lease and let out the said apartment to any person; with or without consideration, and to execute the documents regarding the transfer'. According to the complainant, on 17th June, 2009, he had informed the authorities i.e. the Society as well as the CIDCO about the same. Thereafter, as the possession of the said flat was handed over to the complainant, the complainant entered into a Deed of Conveyance on 22nd September, 2011 on the basis of the General Power of Attorney given by the applicant to the complainant. On getting possession of the premises, the complainant entered into a Leave and License agreement with third

persons, for a period of 11 months each, from October, 2009 to February, 2015. According to the complainant, sometime in December, 2014, he learnt that the applicant had sold the said flat to another person and that the name of the complainant on the electricity bill was also changed. Pursuant to the aforesaid, a complaint came to be lodged by the present complainant with the Nerul Police Station, Navi Mumbai, alleging the aforesaid offences.

4. Learned Counsel for the applicant contended that the amount of Rs. 21 lakhs was paid by the complainant to the applicant, for renovating the gymnasium and that the applicant had also given a sum of Rs. 10 lakhs back to the complainant. He submitted that the applicant had purchased the flat in 2005 and had obtained a loan from the Citi Bank and had also mortgaged the said property to the bank on 30th June, 2005. He submitted that the applicant was running a gym in the said flat. According to him, the registered Power of Attorney given by the applicant to the complainant on 12th September, 2008 was misused by the complainant, and the same was used by the complainant for transferring the said property on his name, on the basis of the Power of Attorney. The learned Counsel submitted that the

applicant had settled the loan with the Citi Bank only on 24th December, 2012, after which the title deeds with regard to the property were received by the applicant and it is only on 7th May, 2014 that the CIDCO had given permission to the applicant to transfer the suit property. According to him, it is only after settling of the dues with the Citi Bank and on receiving the title deeds with regard to the suit property, that the applicant sold the suit property to a third person on 26th September, 2014 vide a registered sale deed.

5. Learned A.P.P as well as the learned Counsel for the original complainant opposed the bail application. It was submitted that a registered General Power of Attorney was executed by the applicant on 12th September, 2008 in favour of the complainant. It is submitted that as payments of Rs. 21 lakhs were made by the complainant to the applicant, on 31st January, 2008, the applicant applied to the Society for issuance of a grant of no objection/no due certificate, as the applicant intended to transfer the aforesaid apartment in favour of the complainant. It is submitted that till date, the Power of Attorney has not been cancelled by the applicant, which was granted in favour of the complainant.

6. Perused the papers of investigation and the relevant documents. It appears that a registered Power of Attorney was executed on 16th September, 2008 by the applicant in favour of the complainant. Vide Clause (3) of the said Power of Attorney the applicant had given the complainant the right 'to dispose of, transfer, lease and let out the said apartment to any person; with or without consideration, and to execute the documents regarding the transfer and all incidental powers pursuant to the same'. Before execution of the said Power of Attorney, various payments came to be made by the complainant to the applicant, for which, receipts came to be issued by the applicant to the complainant. One of such receipt reads thus :

"***<u>RECEIPT</u>***

*I, **MR.NRUSINGHA DHRUBA NAYAK,** an adult, Indian Inhabitant, residing at F/2, D/5, SECTOR 10, NEAR VIJYA BANK, VASHI, NAVI MUMBAI. Received with thanks a sum of Rs. 5,00,000/- (Five Lacs Fifty Thousand Only) by way of DD No. Oriental bank of Commerce on dated 30.08.2007, towards **the sale of F2-B, DEV DARSHAN APARTMENT, 1ST FLOOR, OPP. BUS STAND, SECTOR 11, NERUL 9E0, Navi Mubmai-400 706, from the within named of the purchaser Mr. Naresh Ramchand Punjabi,** residing at unit no. 2, plot no. 128, sector 12, Vashi, Navi Mumbai.*

I SAY RECEIVED
Sd/-
MR.NRUSINGHA DHRUBA NAYAK
TRANSFEROR"

7. Infact, on 31st January, 2008, the applicant made an application to the President/Secretary of the Society requesting for a `no objection/no due certificate' as he intended to transfer the aforesaid apartment in favour of the complainant. The applicant also applied to the Assistant Officer, CIDCO for grant of mortgage for the said flat and sought an NOC from the said Authority. The said letter is also dated 31st January, 2008. It is set out in the said letter that the applicant being the owner of the subject flat, has agreed to sell the said flat to the purchaser i.e. the complainant. An authority letter was also given by the applicant to the complainant for taking steps for transfer of the apartment with CIDCO. On 29th August, 2008, the complainant wrote to the Secretary of the Society, regarding the NOC to be issued by the Society with regard to the suit flat. It was stated in the said letter that the complainant had made full and final payment and had purchased the aforesaid flat from the applicant. Infact, on 13th August, 2008, the applicant had sent a letter to the Secretary/President of the Society stating that he had sold the flat to the complainant and had requested for issuance of an NOC, for transfer of the said flat in the name of the complainant. It was also stated that the applicant had received full

and final consideration for the said flat from the complainant and that he had no objection for transfer of the said apartment in the name of the complainant. It was also stated that the physical possession of the said flat was also handed over by the applicant to a third party. In this background, it appears, *prima facie*, that the applicant had dishonestly sold the said suit flat to a third party, after receiving the payments and after having sold the premises to the complainant.

8. Learned A.P.P submits that there is another C.R which was lodged as against the applicant with regard to a similar offence in 2011, where he had sold another flat to the same complainant and subsequently sold the very same flat to a third party. Considering the material on record, this is not a fit case to grant pre-arrest bail to the applicant. Considering the nature of allegations and the documents on record, custodial interrogation of the applicant would be necessary. The application is accordingly rejected.

9. It is made clear that the aforesaid observations are *prima facie*. If the applicant files an application seeking bail, the learned Judge shall

consider the same on its own merits, uninfluenced by the observations made herein. It is also made clear that if civil proceedings are initiated, the Civil Court shall decide the same on its own merits, in accordance with law, uninfluenced by any of the observations made herein.

10. Learned Counsel for the applicant seeks continuation of the interim relief. Interim relief is continued only for a period of two weeks from today.

11. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.