IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 84 OF 2015

Vadilal Kuvarji Gada. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. S.K. Shukla i/b. Mr. Akhilesh S. Shukla, advocate for Applicant.

Mr. Vipul G. Ashar, intervenor in person

Ms. S.S. Kaushik, APP for State.

Mr. Kamble, PI, Borivali Police Station.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : AUGUST 3, 2015

P.C.:

1 Heard the learned Counsel for the applicant, learned Counsel for the intervenor and the learned APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in

Crime No. 289 of 2014 registered at Borivali Police Station for offence punishable under Section 463, 464, 465, 467, 468, 471, 420, 452, 455, 447, 446, 341, 327, 406, 504, 506 r/w. 120B, 145, 146, 147, 149, 150 of the Indian Penal Code.

3 It appears from the record that 23/7/2014 the husband of the Manjulaben Shah i.e. Shri Devji Raghavji Shah lodged a report alleging therein that Ambe Ma Mandir was purchased by his wife Manjulaben Shah and Priti Vipul Ashar, who happens to be the daughter in law of Gopaldas Ashar, for consideration of Rs. 6 Lakhs. According to him, he had paid entire consideration. The proceedings were being looked after by Shri Vipul Ashar i.e. the complainant in the present case. There are civil proceedings pending before the Court as the BMC had issued a notice under Section 354 of the BMC Act. The said case is still pending. The complainant had started gymkhana on the said plot in the year 2002 itself. Wife of the present applicant i.e. Priti Ashar had 50 per cent share in the said plot. Since the complainant in Crime No. 289 of 2014 was in need of money,

50% share was sold in favour of the present applicant. That Shri Ashar had received entire consideration. The light bill and other documents are in favour of Mrs. Manjulaben Shah. The said premises were given on rent in July, 2013 to one Bhavesh Patel. The said agreement was signed between Devji Shah and the present applicant. In the year 2014, the complainant Devji Shah was to start a jewellary shop on the said premises. He had deputed his employee Ramakant Mishra on the said site. On 5/5/2014 at about 5.30 p.m. Vipul Ashar had offered Rs. 200/- to Mr. Mishra to take some snacks. When he returned at about 5.50 p.m., he saw that Vipul Ashar was not there, instead, there were four unknown persons. They had obstructed Mr. Mishra from entering the said premises. Mr. Mishra was abused and assaulted. The said persons had even attempted to take forcible possession of the said premises. Shri Devji Shah attempted to contact Vipul Ashar. There is no reply. The complaint was lodged alleging that Vipul Ashar was trying to take forcible possession. On the basis of the report, Crime No. 287 of 2014 was registered against Vipul Ashar on 23/7/2014.

4 On the same day i.e. 23/7/2014 Vipul Ashar lodged a report at the same police station alleging therein that the present applicant and others had forged and fabricated documents to dispossess Vipul Ashar and his wife from the said property. That in April, 2014 Priti Vipul has deleted the name of the wife of the complainant from the property extract. That on 5/5/2014 according to the complainant, Shri Devji Shah lodged a false report against the complainant alleging therein that he was attempting to take forcible possession. It was on the basis of forged and fabricated documents purportedly signed by the wife of the complainant that Shri Devji Shah was attempting to take possession. It was alleged that the present applicant happens to be a family member of Devji Shah and that he is the master mind against the whole plot. On the basis of the report of Vipul Ashar, Crime No. 289 of 2014 is registered for offence punishable under Sections 463, 464, 465, 467, 468, 471, 420, 452, 455, 447, 448, 341, 327, 406, 504, 506 r/w. 120B, 145, 143, 146, 147, 149, 150 of the Indian Penal Code.

5 Learned Counsel for the applicant submits that registration of Crime No. 289 of 2014 is in retaliation to registration of Crime No. 287 of 2014. It is pertinent to note that there are civil suits pending before the Civil Court in respect of the same property. According to the complainant in the present case Vipul Ashar forged and fabricated documents have been submitted. The said documents are notarised documents.

6 Perused the statement of the notary, who had executed the said documents. The notary has specifically disclosed that the complainant Shri Vipul Ashar had called him to his house. At that time, deed of assignment was executed between the wife of the complainant and the present applicant. The photographs of the applicant as well as wife of the complainant were affixed on the said stamp. That the father of the complainant was also present in the house. It prima facie appears that the dispute is of civil nature.

7 The learned APP has rightly drawn the attention of this Court to the consent terms filed by the wife of the complainant Mrs. Priti Vipul Ashar in Civil Suit No. 1060 of 2014, wherein the present applicant is shown as defendant No.2. Paragraph-5 of the consent terms specifically denote as follows :

> "All the parties to the present suit agree, accept, declare, admit, confirm as well as undertake to this Hon'ble Court that prior to execution hereof none of them have in any manner mortgaged the suit premises and/or created third party rights, title and interest of whatsoever manner in the suit premises."

It is further submitted that-

> "The defendant No. 2 agrees, accepts, declares, admits, confirms as well as undertake to this Hon'ble Court that within 60(sixty) days from the date of execution of the present Consent Term he shall pay necessary Stamp Duty and Registration charges on the Consent Decree of his 35% share part only and he shall take all the steps to get the Consent Decree registered before the Sub-Registrar of Assurances as per law and the Plaintiff and the Defendant No. 1 shall attend the office of the Sub-Registrar of Assurances for registration of consent decree."

8 Upon query made by this Court, the original complainant who is intervenor in this matter admits that the consent terms are rather signed by his wife.

9 In view of the facts of the present case and the submissions advanced across the bar, the applicant herein deserves pre-arrest bail.

10 It is made clear that the observations made hereinabove are restricted to an application under Section 438 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or for quashing of FIR or at the time trial. The learned Trial Court shall decide the matter uninfluenced by the above said observations and arrive at a conclusion only on the basis of the substantive evidence adduced by the prosecution at the time of trial.

11 Hence, following order is passed:

ORDER

(i) The application is allowed.

(ii) In the event of arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or two sureties in the like amount.

(iii) The applicant shall report to the police station as and when called.

12 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)