

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 211 OF 2015

1 Lokesh Onkarlal Jain.
2 Lokesh Ambalal Jain. ... Applicants.

Versus

The State of Maharashtra. ... Respondent.

Ms. Poonam Ankleshwar a/w. Mr. Parag Shah i/b. Ms. Seema N. Navale, advocate for Applicants.

Mr. Hingorani Pradeep Sunder, advocate for intervenor.

Ms. Rutuja Ambekar, APP for State.

Mr. S.A. Manjrekar, API, V.P. Road Police Station, Mumbai.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : JULY 6, 2015

P.C.:

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

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in M.E.C.R No. 8 of 2014 registered at V.P. Road Police Station alleging therein that the applicant herein have committed offence punishable under section 420, 465, 467, 468, 471 r/w. Section 34 of the Indian Penal Code.

3 It is admitted position that the complainant in the present case happens to be paternal elder uncle of the applicant No. 1. Applicant No. 2 happens to be the brother-in-law of the applicant No. 1. That there were family disputes over the partition and separate possession of the properties. Father of the applicant No. 1 and the complainant were apparently at logger-heads. The complainant and applicant No. 1 were jointly running business till 2003. After 2003, there have been allegations against each other in respect of cheating, forgery and fabrication of the documents in the year 2012. The complainant had filed complaint, on the basis of which M.E.C.R. No. 1 of 2012 was

registered against the applicant No. 2. He has been granted protection by the Sessions Court in the said case.

4 On 20/8/2014 the complainant filed a complaint before the learned Metropolitan Magistrate, 4th Court at Girgaon alleging therein that he had filed application under the Right to Information Act, 2005 and had called information that the applicants obtained work contracts and orders from the Bhiwandi Nizampur Municipal Council by forging documents. That they had furnished false experience certificate and other documents. That the work contract was given in the year 2007. The complainant had learnt about it only in 2011. The complainant had also filed application under RTI Act dated 29/7/2014 and had learnt that the applicants had obtained the contract by playing fraud upon Bhiwandi Nizampur Municipal Council. The learned Counsel for the intervenor submits that Bhiwandi Nizampur Municipal Council has also filed complaint against the present applicants although on different grounds.

5 The learned Counsel for the applicants submits that this, in fact, is a family dispute and colours of criminal action is being given to the disputes between the family members. The learned Counsel for the applicants also submits that there is no plausible explanation for the inordinate delay in filing the complaint.

6 The learned Counsel for the intervenor as against this submits that it was only when the complainant had learnt about the fabrication of documents, he had filed application under the RTI Act and had obtained information. It is also urged that he had approached the police. However, no action was taken by the police for the reasons best known to them.

7 In respect of the allegations levelled in the present complaint, there is no complaint filed by Bhiwandi Nizampur Municipal Council and no coercive action is taken by the Bhiwandi Nizampur Municipal Council against the applicants. The complaint shows the offence, which was committed from 1993 to 2007.

8 The learned Counsel for the applicants has also drawn attention of this Court to the public notice issued by the applicants against the complainant alleging therein that in all probabilities the complainant may misuse the documents which are in his custody.

9 There are allegations and counter allegations. However, considering the delay in initiating complaint and the nature of offence, this Court is of the opinion that the applicants deserve pre-arrest bail since investigation is in progress. The learned Counsel submits that the applicant No. 1 has attended the police station on more than 40 occasions and that the applicant No. 2 has marked his presence before the Investigating Officer for more than 16 times. The learned Counsel submits that the applicants are still willing to cooperate with the investigating agency to the best of their capacity. Hence, the applicants deserves pre-arrest bail.

10 The above observations are prima facie in nature. The same shall not be considered while deciding the application for discharge or quashing of FIR or at the time of trial. The trial Court shall decide the matter uninfluenced by the observations made hereinabove in accordance with law.

11 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest, the applicants are enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each and one or two sureties in the like amount.
- (iii) The applicant No. 1 shall report to the police station on 3 consecutive Sundays commencing from 11/7/2015 between 10 a.m to 1 p.m. and cooperate with the investigating agency to the best of his capacity.

(iv) The applicant No. 2 is resident of Udaipur and he shall report to the police station on 11th , 12th and 14th July, 2015 between 10 a.m. to 1 p.m. and cooperate with the investigating agency to the best of his capacity.

12 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)