

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 229 OF 2015

Dinesh Shivajirao Ghadge. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Nitin Sejpal a/w. Ms. Pooja Sejpal, advocate for applicant.

Mr. Faran M. Khan, advocate for intervenor.

Ms. P.P. Shinde, APP for State.

Mr. S.R. Ugalmugale, PSI CBD Belapur Police Station.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : JULY 15, 2015

P.C.:

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

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in M.E.C.R. No. 5 of 2014 registered at C.B.D. Belapur Police Station for offence punishable under Section 465, 467, 468, 471 of the Indian Penal Code.

3 It is the case of the prosecution that the complainant Shri Y. Venugopal Swami had booked two flats in Anuradha Tower situated at Sardar Nagar, Sion Koliwada. The applicant herein happens to be proprietor of Luxury Builders and Developers. The complainant was allotted flat No. 401 and 402 admeasuring 605 sq. ft. carpet area each. At the time of booking, the payment schedule was decided. The allotment letters were issued on 14/6/2006 and 29/6/2006 respectively. The scheme had received commencement certificate on 16/5/2006 and agreement was executed between Luxury Builders and Developers. On 10/8/2010 the complainant had requested the builder to execute agreement for flats booked by him. It was specifically stated in the said notice that the complainant had paid Rs.

3,87,100/- in respect of flat No. 402 and in respect of flat No. 401 Rs. 3,14,400/-. The complainant had issued several notices for executing the agreement. It was specifically averred that the complainant and his wife could not avail of the home loan from any financial institution in the absence of the agreement with the builders. Despite issuing several notices, the builders had not cooperated. The complainant was therefore, constrained to file a complaint before the Additional Chief Metropolitan Magistrate, 51st Court, Kurla against the proprietor of Luxury Builders i.e. against the present applicant for offence punishable under Section 420 of the Indian Penal Code. The learned Magistrate upon perusal of the complaint and being satisfied that a prima facie case is made out, has issued process against the accused. The order of issuance of process has been challenged by filing revision application before the Sessions Court, Mumbai which is still pending.

4 The complainant had approached the consumer forum by filing a complaint No. 25/2011/2941 and complaint No. 60/2011/2944. It

is specifically stated that the complainant has given change of address to the builders. However, they had not received any letter. The complaint was specifically filed in order to seek a decree for getting the flats booked by the complainant and his wife. It was specifically stated that on 12/8/2010 the builder had sent a notice that the work cannot be completed within the stipulated time and therefore, they should take back the deposits made by the allottees. The consumer forum upon perusal of the records has allowed the complaints and has directed the applicant to pay cost of Rs. 10,000/- and also return the amount paid by the complainant and his wife. The said order is challenged by the complainant before the State forum which is still pending.

5 The learned Counsel for the applicant submits that in fact, he had issued notice to the complainant informing him that he would abide by the decree passed by the consumer forum. The learned Counsel for the applicant submits that he has also sent demand draft for their respective booking amount. During the pendency of the

proceedings before the consumer forum, the applicant herein had filed on record the letters showing that the complainant was informed that the allotments have been cancelled.

6 It is pertinent to note that the applicant had also submitted that the said notices were sent through 'professional couriers'. The applicant had also filed an affidavit of his employees stating therein that they had been to the house of the complainant and he was not found at the address. The complainant had made enquiries with the professional couriers. He had shown the copy of the envelope and the letter and he was informed by the professional couriers that -

“The rubber seal impression as observed from the Document furnished by you is a forged one.

The remark “Not received” is not in conformity with the terminology being used in business parlance.

In the event of any consignment being returned undelivered the reason for non-delivery will be written on the envelope itself. We never affix rubber seal.

In the absence of any Consignment Note Number, we have no scope to verify this.”

It is pertinent to note that on the envelope the seal was of Professional Couriers, Belapur. The complainant had then lodged the report before the concerned court on the basis of which crime No. 5/2014 is registered and investigation is set in motion.

7 The learned APP submits that in the course of investigation, the investigating Officer had inspected the records of the notary where the alleged affidavit of employee was notarised showing that the complainant was not at home. The date on the notarised affidavit is shown as 11/5/2011. However, the records of the notary would show that in fact some documents were notarised before the said notary on 28th May, 2011. The purpose for which the affidavit or documents were notarised before the said notary is in respect of issuance of passport or any other purpose and not related to cancellation of the flat or issuance of notice to the complainant by the employee of the applicant's firm.

8 Perused the record. It is apparent on the face of the record that the applicant had forged the documents in respect of the receipts or endorsement of professional couriers. Similarly, an affidavit which was undated was filed before the consumer forum.

9 Learned Counsel for the applicant submits that since the disputed documents were filed before the consumer forum, it is the consumer forum which should in fact file a complaint as there is an embargo under Section 195 of the Code of Criminal Procedure, 1973. However, it is a matter of record that only after the Judgment was delivered and the decree was passed by the consumer forum, the complainant had learnt that the forged documents have been filed before the consumer forum only to deprive the complainant of his right to get the flats which were booked by him. Learned Counsel for the applicant submits that the applicant had sent demand draft to the complainant which was not accepted. According to the learned Counsel, the applicant has sold the said flat in the year 2012. This

would show that the applicant has placed implicit reliance upon the cancellation of allotment letters issued to the complainant by sending him a notice.

10 The learned Counsel for the intervenor submits that the second notice was received on 30/9/2009. He has never received the notice dated 30/1/2009 and 30/9/2009. This would further fortify that the applicant has forged and fabricated documents to deprive the complainant of his right to get the flats reserved by him. Hence, the applicant does not deserve grant of pre-arrest bail.

11 The papers of investigation clearly indicate that the applicant herein has forged the documents showing service of notice of professional couriers. The rubber seal impression has been forged. The applicant has also misled the Court by relying upon the affidavits filed by his employees showing that the complainant was not at home when they had been to service notice. In fact, the said affidavits were never sworn before the notary on the given date and the purpose of

notarising the said affidavits is also not concerned with the transactions in the present case. The applicant has also cheated the complainant by selling the flats, booked by the complainant, in the year 2012 without giving him any legal notice. Moreover, the complainant had paid initial amount. Upon perusal of the papers of investigation, this Court is of the opinion that the applicant has committed an offence defined under Section 463 and 464 of the Indian Penal Code and would liable to be punished under Section 465 and 468 of the Indian Penal Code. The applicant by fabricating the affidavit of his employees shall also be punishable for offence contemplated under Section 471 of the Indian Penal Code. In view of this, the applicant does not deserve grant of pre-arrest bail.

12 The learned Counsel for the applicant submits that the applicant was granted interim protection by this Court since 10/7/2014. It was further extended by this court vide order dated 17/2/2015 and hence, he prays that the interim relief be extended for a period of two weeks to enable him to challenge the order rejecting the application seeking

pre-arrest bail. It is seen that that the order dated 17/2/2014 passed by this Court (Coram : Revati Mohite Dere, J) would indicate that only because the applicant was on interim bail before the Sessions Court, the same was extended. However, till today, the application was not heard on merits. In the order dated 17/2/2015, this Court had directed the applicant to attend C.B.D. Belapur Police Station on every alternative day from 19/2/2015 for a period of two weeks. The said condition was continued. By an order dated 12th March, 2015 the applicant was directed to report to the police station as and when called. The learned Counsel submits that the applicant is complying with the orders of the Court and therefore, his interim relief should be extended and hence, the interim relief is extended for a period of two weeks.

13 In the facts and circumstances of the case and the submissions advanced across the bar, the application seeking pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 is hereby

rejected. The applicant is protected till 31st July, 2015. The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)