

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 367 OF 2015

Madhukar Vitthal SuryawanshiApplicant

V/s.

The State of MaharashtraRespondent

Mr. Subhash Jha a/w Ms. Rushita Jain i/b Law Global Advocates for
Applicant

Ms. Veera Shinde APP for the State.

Ms. V. V. Ghate, Samarth Police Station, Pune.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : MARCH 11, 2015

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 9 of 2015 registered at Samarth Police Station, Pune for offence punishable under sections 406 & 420 of Indian Penal Code.

2) Learned counsel for the applicant submits that after registration of the offence, applicant had approached Court of Sessions seeking pre-arrest bail.

By an order dated 21/01/2015, learned Sessions Judge had directed that

“If custodial interrogation is needed, 10 days notice be given by I.O.

Inform police.”

3) Application was finally rejected on 04/03/2015. It is pertinent to note that Investigating Officer is present in the Court. Upon instructions, learned APP submits that applicant had never been to the police station or appeared before Investigating Officer. It is further pertinent to note that in any case, there was no such direction issued by the Sessions Court. Learned counsel for the applicant submits that documents were annexed before this Court and therefore, initially it was submitted that same have been tendered to the Investigating Officer. However, subsequently learned counsel for the applicant submits that he has submitted the documents, but is not aware as to whom it was submitted. Learned counsel takes the responsibility of saying that documents were submitted without clarifying as to whether it was submitted before any person from the investigating machinery or Investigating Officer. It is apparent on the face of the record that applicant has never appeared before Investigating Officer and therefore, an omnibus statement has been made that documents have been submitted. This Court has serious reservations about making an irresponsible statement by the learned

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Advocate, without substantiating the claim.

4) Learned counsel has argued the matter on merits. At the outset, when certain queries were made, learned counsel was taken by surprise and has candidly submitted that he had never anticipated that certain queries would have to be answered to this Court.

5) On 21/01/2015, learned Additional Sessions Judge, Pune, while considering the interim application for grant of ad-interim relief has passed an order as follows:

“Hence, if custodial interrogation is needed, 10 days notice be given by I.O. Inform police.”

6) Learned counsel for the applicant submits that by inference, it can be said that said order amounted to grant of interim protection during the pendency of main application seeking pre-arrest bail. In fact, this Court is of the opinion that Sessions Court was not inclined to grant interim anticipatory bail application, but had directed the police to give notice to the applicant, at

least 10 days prior to proposed arrest of the applicant. This order was passed probably with a view that in case there is an urgency, applicant would be at liberty to approach Sessions Court forthwith and argue the matter on merits to seek pre-arrest bail. Therefore, this Court is of the opinion that incorrect statement was made that the applicant was granted ad-interim protection by the Additional Sessions Judge, Pune on 21/01/2015.

7) Learned counsel for the applicant further submits that in fact, applicant had refunded the deposit amount to 182 persons. According to learned counsel, if the Investigating Officer had brought this to the notice of the learned Sessions Judge, probably learned Sessions Judge would have taken into consideration the bonafide intention of the applicant and would have granted relief as prayed for. It is pertinent to note that application seeking pre-arrest bail filed before Sessions Court does not find place in the compilation of the present application. Learned counsel for the applicant is not sure as to whether said averment was made by the applicant before Sessions Court and therefore, the contention that said aspect has not been considered by the Sessions Judge would have no foundation whatsoever. Learned counsel for

the applicant further submits that Sessions Court has been swayed by number of claimants and has therefore, rejected the application seeking pre-arrest bail as there is observation that there is cheating of the public at large by promising to provide them houses on low costs. A statement was made that he has tendered the documents to the Investigating Officer showing that 182 persons have already been compensated.

8) Upon perusal of the order passed by the learned Sessions Judge, it is apparent that learned counsel appeared for the applicant had burdened learned Sessions Judge with various citations, but no material on facts was placed before learned Sessions Judge. Learned counsel for the applicant has made following submissions.

(i) That it would not be fair on the part of prosecution to say that applicant does not have title on the property, where the project has commenced. According to learned counsel, property was purchased by registered sale deed. Scheme was floated on no profit no loss basis.

(ii) That to make the scheme viable, applicant desired to acquire 30 acres of land, however, he could succeed in acquiring only 6.5 acres of

land. Work had commenced in March 2013. That work of 2 buildings is completed to the extent of 70%, whereas work of other 4 buildings is completed up to plinth level.

(iii) That the deposit has been refunded to 182 persons who had opted out of the scheme.

(iv) That the applicant is ready and willing to refund the amount to other persons who desire to opt out of the scheme and that the applicant is willing to pay entire deposit along with 99% interest thereupon.

(v) It is further submitted that only because the project is delayed, it cannot be simply inferred that applicant had no intention to deceive or defraud the persons who had deposited the amounts in the said project.

(vi) According to learned counsel, project was delayed due to unforeseen circumstances and therefore, he could not complete the project within stipulated time. It is also submitted that that applicant has not siphoned off the money and that applicant has spent huge amount on erecting the project. Said amount is much more than deposit received.

(vii) That there is no element of criminality and hence, according to

learned counsel, applicant deserves to be protected by this Court.

9) At this stage, since learned counsel had submitted that 6.5 acre land was acquired, this Court had put a pertinent question as to whether said land was purchased or acquired. Said query was made since learned APP had brought to the notice of this Court the 7/12 extracts of the same lands which were purchased in the year 2011. 7/12 extracts till today, do not show the name of the applicant in the ownership column and therefore, according to learned APP, registered sale deeds are shrouded with mystery and the same needs to be investigated. According to learned APP the applicant does not hold title on the land on which the project has commenced.

10) Learned counsel for the applicant has categorically stated that at this stage, it would be difficult to say as to whether land was acquired or purchased and had sought time to take instructions, however, since the matter was being argued on merits, this Court has refused to grant time. Learned APP Has produced papers of investigation on record. It is seen from the record that applicant herein had founded “Samyak Nivas Hakk Sangh Prayojak : Bhim

Foundation”. Registration number of the said foundation is 1785. It is a residential project. Membership fees was Rs. 2500/-. The house to be allotted was admeasuring 300 square feet. It was one room kitchen. Total cost of one room kitchen was Rs. 10,00,000/- and that the proposed purchasers were to deposit 10% amount as initial deposits.

11) In the course of investigation, it was revealed that another trust was formed named as “Bhim Foundation Samajik, Shaikshanik, Sanshodhan Sanstha Mumbai”. Registration number of the said society is also 1785. Applicant is president of this society also. Learned APP submits that applicant herein had advertised two different schemes with the same registration number. However, learned counsel for the applicant submits that in fact, what was registered is only Bhim Foundation and the said foundation had undertaken the work of housing project as well as social, educational and research activities under “Bhim Foundation Samajik, Shaikshanik, Sanshodhan Sanstha Mumbai”. It appears that applicant had founded two different trusts. It is pertinent to note that office of both trusts happen to be 17 BMC compound, Dr. Babasaheb Ambedkar road, Parel. Therefore, learned

counsel submits that there were two projects undertaken by the same foundation. Learned counsel, at this stage also submits that the only foundation is “Samyak Nivas Hakk Sangh Prayojak : Bhim Foundation”. Learned counsel for the applicant has not made any submission as to whether social, educational and research activities undertaken by the same foundation or not , however, it is revealed in the course of investigation and this Court is of the opinion that there is an element of cheating right in the inception of the project as it would simply mean that the deposits made in “Samyak Nivas Hakk Sangh Prayojak : Bhim Foundation” have been floated or transferred in the social and educational cultural activities. Therefore, members enrolled in both the projects would be cheated.

12) Learned APP, upon instructions from Investigating Officer submits that although, learned counsel has stated that amount deposited by 182 depositors have been refunded by cheques, it is reliably learnt that most of the cheques have been dishonored. Papers of investigation would further show that in fact, applicant was being persuaded by the depositors, either to refund the amount or to hand over the possession of the projects. Deposits have been made more

than 3 years ago. It appears from the records that Applicant had called a meeting of enrolled members on 10/01/2015. Depositors had assembled on the spot, however, applicant did not remain present in the said meeting. Depositors were harassed as they had to make errands to office of the applicant and he was not available. Investigating Officer has placed on record the extract of the station diary which would show that Investigating Officer had tried to contact applicant on his cellphone no. 9221470014. They had also tried to contact him on the landline no. 020-26208238. Applicant was not available. Investigating Officer had then made an attempt to call him on the alternative number i.e. 9833443493. Call was replied, however, he had asked Investigating Officer to send a notice. Investigating Officer had also told that she would send a notice to him. Applicant had then informed the Investigating Officer that he would send his Advocate Shri. Bhavar to Samarth Police Station on the next date in the afternoon. Investigating Officer has placed on record the extracts to show that amount was deposited in the account of present applicant. It appears from the report that applicant had taken office on rent at 446/2 Saraswati Dinbandhu Chowk, Rasta Peth, Pune, however, said office is closed.

13) Application filed before the Sessions Court seeking pre-arrest bail is a part of papers of investigation, since notice was issued to the Investigating Officer. Upon perusal of said application it is clear that applicant had not brought it to the notice of the Sessions Court that he has refunded the amounts to 182 depositors and therefore, it is once again reiterated that said submission is unfounded. Learned counsel for the applicant submits that in fact, although there is a delay in commencing the project, applicant had agreed to compensate the persons who had booked the flat. At this stage, learned counsel for the applicant submits that applicant be relegated back to the Sessions Court to bring it to the notice to the Sessions Court, however, this Court is of the opinion that this is a futile exercise. It was stated before the Sessions Court that applicant is a social worker. It was contended before the Sessions Court that 'Factual aspect reflects that the said dispute is civil in nature'. All contentions raised by the applicant are unfounded.

14) It was in the facts and circumstances of this case and moreover, Investigating Officer is present before the Court along with papers of

investigation, that application is being decided finally on the very first day as this Court had given substantial hearing to the learned counsel for the applicant and it would be a futile exercise to waste the valuable time of any Court in adjourning the matter to the next date.

15) It is made clear that observations made herein above are prima facie in nature and shall not be considered for application under section 439 of Code of Criminal Procedure, 1973, quashing of F.I.R., discharge application or at the time of trial.

ORDER

(i) Application, being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)