

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 526 OF 2015

1. Vinod Ramakant Raste)
2. Ramakant Devu Raste)
3. Satyanarayan Yadav).. Applicants
vs.
The State of Maharashtra ... Respondent

WITH
CRIMINAL APPLICATION NO. 355 OF 2015
(for INTERVENTION)

Rajendra Prasad Lallan Gupta .. Intervener

In the matter between:

Mr. Vinod Ramakant Raste & Ors. .. Applicants
vs.

State of Maharashtra .. Respondent

Mr. Ajaykumar B. Rai, Advocate, for the applicants.

Mr. Sandeep Mishra for the Intervener.

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

Mr. C.D. Koli, API, Shrinagar Police Station present.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 22nd July, 2015.

P.C.

Heard. This is an application under Section 438 of Cr.P.C.

The applicants herein are apprehending their arrest in Crime No. 53 of 2015 registered at Shreenagar Police Station for the offences punishable under Sections 420, 468, 471, 506 read with Section 34 of IPC.

2. It is the case of the prosecution that on 14.2.2015, Rajendra Prasad Lallan Gupta lodged a report at the Shreenagar Police Station, Thane that he had purchased Block No.67, House No.100/15 from Rajkumar Kanhailal Sharma by an agreement dated 29.4.2014 for a total consideration of Rs.7,25,000/- and the document was notarized. He had paid Rs.7 lakhs by cheque to Shri Rajkumar Sharma. He had taken possession of the said room and thereafter had given the said room on rent to Shri Ashusingh Shekhavat. On 11.9.2014, he wanted to pay the taxes of the said room and therefore filed an application to the Divisional Office. On 24.11.2014, he approached the office and at that time, he learnt from an official that Ramakant Devu Raste had filed an application seeking permission to pay the taxes of the said room. The complainant obtained the copies of the application filed by Ramakant Raste. Upon perusal of the application, the complainant learnt that Shri Ramakant Raste had purchased the said room from Rajkumar Sharma on 7.9.2013. There was a notarized document, affidavit and possession certificate as well as no objection certificate and the said documents were notarized. The complainant verified the same from the original owner. The complainant had contacted the original owner on cellphone and made enquiries. The

original owner had informed the complainant that he had never sold the room in favour of Ramakant Raste. In the meantime, it is alleged that the present applicant Nos. 1 and 2 had been to the shop of the complainant and had threatened him of dire consequences. The complainant was threatened to give consideration of Rs.4 lakhs. On 9.2.2015, the original owner Rajkumar Sharma had been to Thane and had met the complainant. The complainant was informed by Shri Rajkumar Sharma that the documents purportedly showing the transaction between the original owner and the applicant is a forged document. The complainant had also filed Civil Suit No.681 of 2014 before the Civil Judge, Senior Division, Thane. It was specifically averred in the plaint that the documents submitted by the defendant No.2 are forged documents. The suit was filed for seeking a declaration that the agreement between the present applicants and the original complainant is null and void and also seeking perpetual injunction against the present applicants.

3. Perused the papers of investigation. The Investigating Officer has recorded the statement of the original owner who has specifically contended that he had no transaction with the present applicant Nos. 1 and 2 and had never sold the said property in their favour. The Investigating

Officer has also recorded the statement of the Notary before whom the alleged agreement to sale was purportedly executed. The Notary has disclosed to the police that the seal on the said document does not belong to his office. That he has never signed the said agreement and the entries which are shown on the said agreement are pertaining to other people.

4. The learned counsel for the applicants submits that since the applicants had purchased the said property in the year 2013, his agreement is first in point of time. According to the learned counsel, the complainant herein had been to his house, threatened his wife and therefore the wife of the applicant No.1 was constrained to lodge report against the present applicants in January, 2015. According to the learned counsel, in retaliation of the registration of the said offence, the complainant had set the law into motion. It is also submitted that the original owner Mr. Rajkumar Sharma is also defendant No.1 in Civil Suit No.681 of 2014.

5. The learned counsel for the applicants has placed reliance upon then Judgment of the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mehre vs. State of Maharashtra & Ors. AIR 2011 SC 312** on head-notes (B) and (D), wherein the Hon'ble Court has held that an *“accused released on anticipatory bail cannot be compelled to surrender*

before the trial Court and again apply for regular bail. It is contrary to spirit of S.438 and also amounts to deprivation of his personal liberty. Ordinarily, benefit of grant of anticipatory bail should continue till end of trial of that case unless bail is cancelled on fresh circumstances”.

6. In the present case, the allegations levelled are of forgery and fabrication of documents. The papers of investigation would clearly show that the applicants have forged and fabricated the documents. The Hon'ble Apex Court in the Judgment cited supra guided the courts that “the courts considering the bail application should try to maintain fine balance between the societal interest vis-a-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court”.

7. Prima facie, there is evidence to show that the applicant has forged and fabricated the documents. In the present case, it may not be said that personal liberty of the applicant should over-weigh the societal interest specially when the court is considering fabrication of notarized documents. It would result in grave miscarriage of justice.

8. The learned counsel for the applicant next relied upon the Judgment of the Hon'ble Apex Court in the case of **Paramjeet Batra vs.**

State of Uttarakhand & Ors (2013) 11 SCC 673, wherein the Court was considering the application under Sec. 482 of Cr.P.C. The Hon'ble Apex Court had observed that power under Section 482 of Cr.P.C. to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. According to the learned counsel, the dispute is of a civil nature and therefore the applicants deserve grant of pre-arrest bail.

9. The learned counsel for the intervener submits that it is brought to the notice of Civil Judge, Senior Division, seized with the Civil Suit No.681 of 2014 that the documents filed by the present applicants along with written statement are forged and fabricated and it is on this ground that the complainant is seeking a declaration that the said agreement is null and void.

10. Taking all these aspects into consideration the applicant Nos. 1 and 2 do not deserve the discretionary relief in the nature of grant of pre-arrest bail under Section 438 of Cr.P.C.

11. It is seen from the papers of investigation that the applicant No.3 happens to be an attesting witness to the notarized sale deed. It is also

submitted that the two other witnesses against whom there are similar allegations, have been protected by the Court of Sessions. By virtue of doctrine of parity, the applicant No.3 would also be entitled to grant of pre-arrest bail as it cannot be presumed at this stage that the applicant No.3 was aware of the fabrication of the documents. The applicant No.3 deserves grant of pre-arrest bail.

ORDER

(i) In the event of his arrest, the applicant No.3 – Satyanarayan Yadav be enlarged on bail on furnishing P.R.Bond in the sum of Rs.25,000/- and one or more sureties in the like amount.

(ii) The application filed by applicant Nos. 1 and 2 stands rejected.

12. The Intervention application is heard, allowed and disposed of.

13. At this stage, the learned counsel for the applicants, upon instructions from the applicants who are present in the Court, submits that the applicant Nos. 1 and 2 would surrender before the Court of concerned Magistrate on or before 30.7.2015. In view of this, the applicant Nos. 1 and 2 are protected till 5.00 p.m. on 30.7.2015. The learned Magistrate shall consider the application under Section 437 of Cr.P.C. on merits.

(SMT.SADHANA S.JADHAV, J.)