

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 564 OF 2015

Mr. Navnath N. Jivlage	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Meghashyam K. Kocharekar, Advocate, for the applicant.
Ms. P.P. Shinde, APP, for the State
Mr. Ramesh Khilare, PSI, Kasturba Police Station present.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 29th June, 2015.

P.C.

This is an application under Section 438 of Cr.P.C. The applicant herein is apprehending his arrest in Crime MECR No.4/2015 registered at Kasturba Marg Police Station, Mumbai for the offences punishable under Sections 406, 420, 467, 468, 120B read with Section 34 of Indian Penal Code.

2. It is the case of the prosecution that on 2.4.2014, the complainant Najmi Johar lodged a report at the police station that he was working as a freelance journalist. He was introduced to the present applicant in January 2013 at Welcome Hotel, Dattapada Road, Borivli (East), Mumbai. The complainant was with another person namely Baburao Suryavanshi, who had impressed upon the complainant that he was

well connected in the Mantralaya of State of Maharashtra and that they would be able to give the complainant flats from the reserved category. Accordingly, the complainant had, at the instance of the applicant, decided to book one flat and for that he had borrowed Rs.8 lakhs from his relatives and had prepared requisite documents and paid Rs.8 lakhs to the applicant. It is alleged that from time to time he had given the amount to the present applicant. The total amount paid by the complainant to the applicant is Rs.85 lakhs. It is alleged that the applicant had neither returned the amount of Rs.85 lakhs nor had given him the flat which was promised and hence criminal prosecution was initiated.

3. In the present case, it is pertinent to note that the applicant had filed a complaint, which was registered as Crime No.186 of 2013 before the learned Magistrate at Latur on 7.10.2000. That after investigation, the Investigating officer of Shivaji Nagar Police Station, Latur had filed 'B' Summary on 11.12.2013. In the said complaint, the applicant herein had made allegations that the complainant in the present case had cheated him for an amount of Rs.15 lakhs on the pretext of giving a flat in Mumbai. The complainant in the present case has specifically stated that he was introduced to the present applicant in January 2013 at a particular place which is definitely the time after the closure of the Case bearing No.186 of

2013. there is no reference in the said first information report that the police officer of Shivaji Nagar police Station had summoned the present applicant either to record his statement or to make proper investigation. The closure report is also not challenged by the present applicant. It appears from the records that the present applicant has filed Civil Suit No.107 of 2013 before the Civil Judge, Senior Division, Latur. The suit is for specific performance. It appears from the records that the suit summons was issued to the defendant in December 2013. The suit was registered and made over to the 2nd Joint Civil Judge, Latur on 11.11.2013. The said suit is scheduled for hearing on 13.7.2015. There are allegations and counter-allegations on behalf of the complainant as well as the applicant that they have been cheated.

4. The learned APP upon instructions from the complainant, who is present in Court, submits that no civil suit is filed by the complainant. It is submitted that complainant received the summons in C.S. No.107/2013 in May 2014 and FIR is lodged on 2.4.2014. The learned counsel for the applicant submits that the complainant was fully aware that the applicant was in the process of filing the suit and, therefore, by way of counter-blast, the complainant lodged the present report on the basis of which C.R.No.4 of 2014 is lodged at Kasturba Marg Police Station. A civil dispute is

pending between the parties. It appears that the dispute is civil in nature and hence custodial interrogation would not be imperative.

5. In view of this, the application deserves to be allowed. It is made clear that the observations made are prima facie in nature and shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) In the event of his arrest, the applicant be enlarged on bail on furnishing P.R.Bond in the sum of Rs.15,000/- with one or two sureties in the like amount.
- (iii) The applicant shall report to the concerned police station on three Sundays commencing from 5th July, 2015 between 11 a.m. to 5 p.m.

Application is allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)