

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 974 OF 2015

Mr. Bhavesh Prabhudas BhindeApplicant

V/s.

The State of MaharashtraRespondent

Mr. Sujit Shelar a/w Mr. Amul Jawale i/b Mr. Arackal Paulose
Advocate for Applicant

Ms. Rutuja Ambekar APP for the State.

Mr. S. Jagtap, A.S.I. Mulund Police Station, Mumbai.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : AUGUST 13, 2015.

PC :

Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 156 of 2015 registered at Mulund Police Station for offence punishable under sections 420, 406 r/w 34 of Indian Penal Code.

2) It is the case of prosecution that on 08/04/2015, Jayesh Mirani lodged a report at the police station alleging therein that he had given a written complaint to the police on 09/02/2015. On 01/03/2015, police had taken into consideration the allegations levelled by the complainant. For verification of the said report, complainant was called to the police station on 08/04/2015. It is alleged that complainant happens to be owner of city survey no. 1314,

ism

1314/1 to 122. He has inherited the said ancestral property. That he is the owner of Baithi Chawl at Kailas Ashish. That his father vide General Power of Attorney dated 19/06/2007 had given him the authority to supervise over the said properties. His grandfather expired on 19/08/2010. That he is the owner of room nos. 9, 10 & 11. That present applicant and his mother were inducted as tenants in the said property 15 years ago. They were to pay rent at the rate of Rs. 800/- per month. Since, 2007, applicant had not paid rent and therefore, a legal notice was issued to him to vacate the said premises. That the applicant had arrived at an amicable settlement with the complainant and it was agreed that applicant would surrender his tenancy rights for consideration of Rs. 30,00,000/-. That he had in fact vacated the rooms on 08/11/2013. On 02/01/2015, his friend Rajani Parmar informed him that applicant wanted to take some insurance papers lying in the said room and therefore, applicant had demanded the keys of the said room. Complainant had in all fairness acceded to the request of the applicant.

3) It appears that Mr. Parmar was made to communicate with some bank authorities. He had learnt from Court receiver that applicant had mortgaged the said property with bank. He had not paid loan which he had borrowed

and therefore, bank had taken action under section 13 of Securitisation Act. High Court had appointed a Court Receiver and symbolic possession was taken. Thereafter, on 07/01/2015, complainant had lodged a suit in the High Court bearing no. 675/2014, 685/2014, 694/2014 and 695/2014. In the course of enquiry, he had learnt that applicant had committed fraud upon the complainant. First informant has relied upon the documents such as possession receipt and cash received receipt which shows that applicant had received Rs. 3 lacs by cheque and Rs. 7 Lacs in cash towards consideration for surrendering tenancy rights. Complainant was therefore, constrained to file a criminal case against present applicant.

4) Upon perusal of papers of investigation and after hearing the submissions of respective counsel, it appears that applicant herein has filed suit no. 5835 of 2015 before Bombay City Civil Court at Bombay wherein complainant is a defendant. Civil Court has considered the possession of the said premises. Civil Suit No. 685 of 2014 is filed against present applicant by another creditor whereas complainant has filed suit no. 1143 of 2015 in respect of the same suit premises which is pending before the Court. In view of this, learned Civil Court has recused to pass any interim orders. Civil Court

is seized with the matter to decide in respect of title as well as possession of the said premises.

5) In the interregnum, investigating agency has investigated into the rival contentions of the parties and has filed a report that it appears from the records that in the year 2006, present applicant has purchased room no. 9, 10 & 11 from Dharmesh Mirane who happens to be brother of present applicant.

6) Learned counsel for complainant submits that since applicant was put into possession on rent. Applicant was in possession of the said premises on Pagadi basis and therefore, said rooms could not have been sold. However, it is a matter of record that in 2006, applicant had purchased the property by virtue of registered sale deed. The legality and validity of the said sale transaction would be a subject matter of the civil suits pending between the parties. As on today, there are rival contentions. Complainant as well as applicant submit that documents upon which both parties are relying upon are forged and fabricated documents. Applicant herein has also filed a complaint against present complainant alleging therein that complainant has forged and fabricated his signature as well as non-judicial stamps to show that he has accepted Rs. 30 lacs from the present applicant only to deprive him of

his right to a better title of the said premises.

7) In view of the rival contentions, it is prima facie clear that the dispute is of a civil nature. Hence, custodial interrogation would be imperative. It is made clear that observations made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicant be enlarged on bail on furnishing P. R. bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- (iii) Applicant shall report to concerned police station on every Sunday between 10.30 a.m. to 01.00 p.m. till the filing of the charge-sheet and co-operate with investigating agency to the best of his capacity.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)