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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1284 OF 2015

Mr.Mukesh S/o. Jwalaprasad Gupta ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO.746 OF 2015
IN
ANTICIPATORY BAIL APPLICATION NO.1284 OF 2015

Mr.Kalpesh Jethalal Palan ...Intervener

IN THE MATTER BETWEEN

Mr.Mukesh S/o. Jwalaprasad Gupta ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr.Manoj Mohite a/w Mr.Anand Mishra, Ms.Sneha Singh i/b Ashok M. Saraogi, for the Applicant

Ms.Veera Shinde, A.P.P for the Respondent-State

Mr.Akhilesh S. Dubey a/w Mr.A.A.Khan, Mr.Rahul Sharma and Ritika Gupta i/b Law Counsellors, for the Intervener/Original Complainant.

CORAM : REVATI MOHITE DERE, J.
DATE : 19th OCTOBER, 2015

P.C. :

1. Heard learned Counsel for the applicant, the learned A.P.P. and the learned counsel for the intervener/original complainant at length.

2. By this application, the applicant seeks pre-arrest bail in connection with C.R. No.I-134 of 2015 registered with the APMC Police Station, Navi Mumbai for the alleged offences punishable under Sections 420, 406, 467, 468 of the Indian Penal Code.

3. The complainant is one Kalpesh J. Palan. He is stated to be a property consultant and trader. He has stated in his complaint that he was doing the business of property consultancy and trading from his office at Vashi, Navi Mumbai ; that his nature of work was essentially in Navi Mumbai and Raigad and that after the land was acquired by CIDCO under the 12.5% Gaothan Expansion Scheme', 12.5% of the land was given back to the owners and it is these lands that the complainant would purchase ; and that he was doing the said business for the last 16 years. He has stated that while doing the said business, he met the applicant, his brother - Vikas Gupta and one Ashok Hariram Mewani, who were also engaged in

the business of property trading and were also dealing in steel. He has stated that the applicant and his brother had a office at APMC, Navi Mumbai and Ashok Harish Mewani had his office at Koparkhairane, Navi Mumbai. He has stated that as the aforesaid three persons were also in the property business he was well acquainted with the said persons and there was interaction between them. He has stated that as he was new to the said business, the aforesaid three persons were helping him in his business, and they were working in partnership. According to him, although there was no document i.e. partnership deed, the business was being run by them, on the basis of trust between them. He has stated that as he was busy looking for new plots, the aforesaid persons would help him and the present applicant had opened a bank account in his name in Karur Vysya Bank. He has stated that as he was busy with his work, the applicant had given blank signed cheques of Karur Vysya Bank to him, so that there were no obstacles in the work. He has further stated that in 2008, he wanted to purchase a plot i.e. Plot No.43, Sector 3, ad-measuring 700 mtrs, at Ulve, Navi Mumbai. He has stated that as he was interested in the said plot, he obtained information from CIDCO and found that the said plot belonged to Suresh Hari Madvi and Ashok Hari Madvi, residents of Ulve. He has stated that pursuant to the said information, he contacted the said Suresh and Ashok Madvi and thereafter decided to purchase the said plot from them. Accordingly, on 7th May, 2008 a Tripartite Agreement was entered into between the complainant, CIDCO and Suresh and Ashok Madvi. On 1st July, 2008 the said plot was transferred in the name of the complainant and the same was registered in the office of the Registrar at Panvel. Thereafter, the complainant moved from his office which was a rented premises to an office, at Jayant Oil Mills Compound, Plot No.48.49, Sector 19, APMC, Vashi, Navi Mumbai, which he purchased in the year 2009. He has stated that during the shifting of his office, the original file pertaining to the said plot i.e. plot no.43 was misplaced and hence he had lodged a complaint with the Turbe Police Station on 29th November, 2010, with regard to the same.

4. According to the complainant, when he was reading 'Vashi Times News' a Weekly Newspaper, dated 26th January, 2013 to 1st February, 2013, he came across an advertisement with regard to the said plot (Plot No.43) which belonged to him, which stated that the said plot was being

offered for sale by the applicant. Pursuant to the same, the complainant sent a legal notice through his Advocate dated 30th January, 2013 stating therein, that the plot belonged to him and that he had not sold the said plot to any persons, including the applicant. He has stated that no reply was received to the said letter dated 30th January, 2013.

5. Sometime in 2014, the aforesaid plot, being plot no.43 was sold by the complainant to M/s.Gold Crest Builder and Developers, pursuant to a Tripartite Agreement dated 11th September, 2014 entered into between the complainant, CIDCO and M/s.Gold Crest Builder and Developers. According to the complainant, pursuant to a Tripartite Agreement dated 11th September, 2014, M/s.Gold Crest Builder and Developers, submitted a building plan to the Planning Authority, at Raigad. It is alleged that at that time, it was revealed, that the applicant had filed a Civil Suit in the Panvel Court and that on 21st July, 2014 an ad-interim stay was granted by the said Court, with respect to the said plot of land (Plot No.43). According to the complainant, on learning of the said Civil Suit, he went to the Panvel Court and went through the documents submitted by the applicant and on going through the documents found that the applicant had

forged and fabricated ; a Memorandum of Understanding dated 24th September 2010 allegedly entered into between the complainant and the applicant ; and a Power of Attorney dated 5th May, 2012 allegedly given by the complainant to the applicant. He has stated that the said documents were brought to the notice of the Civil Court, pursuant to which the ad-interim stay granted earlier was vacated by the learned Civil Judge. Thereafter, the complainant is stated to have obtained the forged and fabricated documents filed by the applicant and after receiving the documents found that not only were the Memorandum of Understanding and Power of Attorney forged and fabricated, but also found from the Bank statements, that his bank account was misused by the applicant. According to the complainant, on seeing the statement of Karur Vysya Bank, he was shocked to see that from 24th September, 2010 to 28th October, 2010, an amount of Rs.2,50,25,000/- was deposited in his account and was immediately transferred by RTGS to various fictitious companies created by the applicant, by using the blank signed cheques given by the complainant to the applicant. The said amount were transferred by RTGS by forging the complainant's signature on the forms, in the name of M/s.VM.Udyog, M/s.Sai Enterprises, M/s.G.K.Tradelock, M/s.Balaji

Trading, M/s.M.KCorporation, M/s.Somnath International etc. According to the complainant, he had nothing to do with any of the aforesaid companies and that the applicant had misused the account standing in his name and the blank signed cheques given by him and had transferred various amounts from Karur Vysya Bank to the aforesaid companies, of which the applicant himself was a beneficiary. Pursuant to the aforesaid, a complaint was lodged as against the applicant and others on 10th June, 2015.

6. Learned Counsel for the Applicant submitted that the applicant has been falsely implicated in the said case. He submitted that even according to the complainant, blank signed cheques were handed over by the complainant to the applicant in 2008 and that no steps were taken by him thereafter, to find out the status of his account. He submitted that it is unbelievable that till 2015, the complainant did not bother to enquire about the said cheques or find out the details of his account. According to the learned counsel in the year 2009 as the complainant was in financial crisis and was not in a position to take a housing loan in respect of two residential premises, the applicant had agreed to purchase the said flats and had paid

consideration for the same to the complainant. He submitted that the bank statements disclosed that the complainant had received the amount and that he had immediately deposited the said amounts in his account. According to him, neither the Memorandum of Understanding nor the Power of Attorney is forged and fabricated, inasmuch as, the said documents bear the signatures of the complainant. He submits that pursuant to the MOU and POA given by the complainant to the applicant, he sold the said plot to a third party, by entering into a Tripartite Agreement, executed between himself, CIDCO and third party. He submits that the applicant had transferred amounts, in the complainant's account in Karur Vysya Bank and that the complainant was paid for the said plot of land (Plot No.43). According to the learned counsel for the applicant, the complainant has transferred various amounts from his account to various accounts of Companies, by signing on RTGS/NEFT forms. He submitted that even the RTGS forms by which the RTGS transfers were done, from the Karur Vysya Bank in the accounts of the various other companies, were signed by the complainant. He submitted that the complainant was well aware of the civil proceedings which were initiated as against him, he being a party to the same and therefore it cannot be said that the complainant had no knowledge of the documents as alleged.

7. Learned APP opposed the application. She submitted that the applicant had not only systematically cheated the complainant but had also cheated the bank by submitting forged and fabricated documents allegedly signed by the complainant. She submitted that the blank cheques signed by the complainant were misused by the applicant and thereafter the said amounts were transferred in the names of the various companies, of which the applicant himself was a beneficiary. She relied on certain 164 statements to show how the fictitious companies were formed at the behest of the applicant by making some employees as its Directors and that the said persons were paid Rs.5,000/- per month by the applicant, for being the Directors of the said companies. She submitted that a perusal of the statements will clearly show that the amounts were withdrawn by the applicant. According to her, the complainant's signature has been also forged by the applicant by signing various receipts and RTGS forms. According to the learned APP, the Memorandum of Understanding dated 24th September 2010 is itself a forged and fabricated document as is evident from the statement of Rahul Gupta and another bank witness. She

submitted that the said statement of Rahul Gupta, shows that the franking which was done on the Bank, was not of the bank.

8. Learned Counsel for the Intervener supported the submissions advanced by the learned APP. He submitted that there is no question of delay in lodging the FIR, inasmuch as, the complainant learnt about the said fraud committed on him, only when he appeared before the Civil Court in October 2014 and obtained the documents which were forged and fabricated. He submitted that infact in the civil proceedings, although the complainant was party to the said proceedings, the address given in the said Civil Suit by the applicant, was deliberately the old address of the complainant and that record will show that no summons was served on the complainant. According to him, the complainant on learning of the stay granted by the Civil Court appeared suomoto, before the learned Civil Judge and pointed out the true and correct facts, pursuant to which the stay granted earlier in favour of the applicant, was vacated. According to him, the complainant has neither signed the Memorandum of Understanding nor the Power of Attorney as alleged by the applicant. He submitted that the applicant had siphoned of a sum of Rs.2,50,25,000/- in a systematic

manner by cheating the complainant. He submitted that the Tripartite Agreement allegedly entered into also appears to be a forged document. He submitted that the said document is missing from the CIDCO files. He submitted that the said Tripartite Agreement dated 20th October, 2010 is doubtful.

9. Perused the papers in particular the Tripartite Agreement, Memorandum of Understanding, Power of Attorney, receipts, RTGS/NEFT Forms, the Statement of Accounts of Karur Vysya Bank and the 164 statements of the witnesses. As far as Memorandum of Understanding is concerned, it appears from the letter addressed by the Thane Bharat Sahakari Bank Limited to the Police Officer of APMC Police Station, Navi Mumbai dated 7th September, 2015, that the franking done on the Memorandum of Understanding dated 24th September, 2010, does not match with the series of serial numbers generated from the Franking Machine and entered in the Franking Register on 22nd September, 2010. It is also stated that Junior Clerk, Mr.Rahul Gholap was working in the Franking Department of the Bank, however, the signature on the copy of the aforesaid MOU dated 24th September, 2010 is not subscribed by the

said Clerk. The statement of Rahul Gholap also shows the discrepancies in the Franking numbers on the Memorandum of Understanding. He has categorically stated that this document is not franked by his bank and by him. Prima-facie, the Memorandum of Understanding appears to be a forged and fabricated document. The statement of various witnesses which have been recorded under Section 164 of Code of Criminal Procedure viz., Tushar Ruparal, Ashwin A. Ruparel, Kisan G. More, Bhavesh R. Shah, Mehul N. Darji and Samarbahadu P. Verma, clearly show the manner in which fictitious companies were created by the applicant and how money was transferred form Karur Vysya Bank i.e. from the complainant's account by the applicant himself, into these fictitious companies and that the applicant was the beneficiary of the same. It appears from the said 164 statements that the said persons who were shown as Directors of the said companies, were merely employees and were receiving Rs.5,000/- per month for being Directors on paper for the said companies. It appears that the applicant and Sushil Kadam had taken blank signed cheques from these persons i.e. so called Directors of the Companies and withdrawn monies transferred from Karur Vysya Bank by RTGS/NEFT into the account of the said companies. The statements clearly show that all these companies were fictitious companies which were opened at the behest of the applicant and that the money was also withdrawn at the behest of the applicant. A perusal of the Statement of Account of the complainant in Karur Vysya Bank shows that the amounts which were deposited in the complainant's account by the applicant were transferred into the accounts of various companies on the very same day and also withdrawn at the behest of the applicant. It also appears that RTGS/ NEFT transfer application forms allegedly signed by the complainant were infact not signed by him and that someone had forged his signatures for transferring various amounts into the account of these fictitious companies formed at the behest of the applicant. The beneficiary in all the said transactions was the applicant himself. As far the submission with regard to delay is concerned, it may be noted, that although prima-facie at the first blush it appeared that there is a delay of 4 to 5 years, however, after going through the documents and the statements, it prima-facie appears that the applicant had clearly misused the account standing in the name of the complainant and had forged and fabricated the Memorandum of Understanding and Power of Attorney and had transferred the said plot (Plot No.43) on his name and sold the same. It appears that the complainant was not aware what was happening till M/s.Gold Crest Builder and Developers, filed an application seeking permission to construct on the plot of land with the Planning Authority at Raigad. It is then, that the complainant learnt that there was a suit filed by the applicant. It also appears prima-facie, that although the complainant was a party respondent in the said suit, no summons was served on the complainant. The complainant as is evident appears to have learnt about the fabrication of the documents only in the year 2014, pursuant to which he took steps to file the aforesaid complaint.

10. Considering the allegation, which are serious in nature and the role of the applicant and the material on record, the custody of the applicant is imperative. Hence, the Applicant is not entitled to the discretionary relief under Section 438 of Cr.P.C. Accordingly, the application for anticipatory bail is rejected and disposed of as such.

11. It is made clear that if an application for regular bail is filed, the same shall be considered on its own merits, uninfluenced by the observations made in this order.

12. In view of the disposal of the Anticipatory Bail Application No.1284 of 2015, the Intervention Application being Criminal Application No.746 of 2015 does not survive and the same is also disposed of.

13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.