

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1293 OF 2014

1.	Rakesh Shankar Shetty	)
2.	Sukesh Shankar Shetty	).. Applicants
		(Orig.Accused)

vs.

The State of Maharashtra	...	Respondent
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WITH

CRIMINAL APPLICATION (INTERVENTION) NO. 680 OF 2014
in
ANTICIPATORY BAIL APPLICATION NO. 1293 OF 2014

Haresh Kishinchand Rawtani	..	Intervener/First Informant
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In the matter between :

Rakesh Shankar Shetty & Anr.	..	Applicants
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vs.

The State of Maharashtra	..	Respodnent
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Mr.Shirish Gupte, Senior Counsel i/b. Ms. Swapna Kode,Advocate,for the applicant.

Mr. Vinay J. Bhanushali for Intervener.

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

Mr. S.R.Gove, P.I. Bhandup Police Station present.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 6th August, 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. 34 of

2014 registered at Bhandup Police Station on 4.2.2014 for the offences punishable under Sections 465, 466, 467, 468, 471, 420, 447 read with Section 34 of the Indian Penal Code.

2. By an order dated 10.10.2014, this Court (Coram: Sadhana S. Jadhav, J.) had granted interim relief in favour of the applicant.s

3. The learned APP submits that except on one occasion, the applicants have abided by the conditions imposed upon them while granting interim relief. Upon instructions from the Investigating Officer, the learned APP submits that certain original documents are necessary for the purpose of investigation.

4. The learned Senior Counsel for the applicants submits that in case they are in possession of these documents, they would give the same to the Investigating Officer.

5. It is the case of the prosecution that on 17.10.2013, the complainant Haresh Rawtani had given a written report to the P.I. of Bhandup Police Station to register a complaint against the applicants for

the offences punishable under Sections 467, 468, 469, 471, 474 and 420 of Indian Penal Code. On 30.10.2013, Sukesh Shetty had lodged a report against Vinod SuvarNa at the same Police Station. On 27.12.2013, the police had filed a report to the higher officers seeking permission to register an offence against the present applicants. On 13.1.2014, permission was granted. On 4.2.2014, the offence was registered against the present applicants.

6. It is pertinent to note that in the letter dated 17.10.2013, the complainant had also made a grievance against the Notary Advocate Ashok Gaikwad. However, Notary Advocate Ashok Gaikwad is not shown as an accused in the present case, but his statement has been recorded as a witness under Section 161 of Cr.P.C.

7. On 4.4.2014, statement of complainant Haresh Rawtani was recorded by the police. He has alleged that he has inherited the property at CTS No.304A at Bhandup admeasuring about 5,000 sq. mtrs. The said property was purchased in an auction. His father expired on 3.6.1991 and since then he and his brother Pritam are the owners of the said property. Adjacent to the said property, there is Jayant Oil Product Company which

was in possession of Smt. tripti Kapadia. The title was with the complainant, however possession was with Tripti Kapadia. A suit was filed in the Bombay High Court and a Deed of Conveyance was recorded between Tripti Kapadia and the complainant. According to the complainant, he had signed a Deed of Development in respect of the said property with M/s. Ajanta Airawat Infrastructure LLP. There was also a proposal to develop the property which was in possession of Tripti Kapadia. There was an understanding between both the parties and the Deed of Conveyance as well as the Memorandum of Understanding was recorded. According to the complainant, in the month of September, 2013, he had learnt from Shri Sunil Shah, a partner of Airawat Construction that Rakesh Shetty who seems to be a partner of G.S. Construction has claimed title over the said property. That they had admitted to trespass on the said property on 19.9.2013 and 20.9.2013. That Sunil Shah was informed by the accused-applicants that there is a Sale Deed executed between the complainant and their firm G.S. Constructions. It is alleged that the present applicants were claiming title over the said property on the basis of a forged irrevocable power of attorney, sale deed purportedly executed on a Rs.100 Non-judicial Stamp paper and the Memorandum of Understanding as well as the Indemnity Bond. In the first information report, the complainant has

shown lacunas in the said documents due to which they cannot be considered as genuine documents. According to the complainant, the applicants herein had forged all the documents.

8. It is pertinent to note that there is no reference to the partnership deed in the first information report.

9. The learned Senior Counsel for the applicant submits on the basis of the documents that in the year 2009, the applicants had entered into a partnership Deed with Airawat Constructions. That the said documents were signed by the Rawtani Brothers and Sukesh Shetty. The said documents were sent for registration to the Registrar of Firms. There is an enquiry in respect of the said documents. The Registrar of Firms has informed the Investigating Officer that the papers of registration of the said firm were sent to the office of the Registrar of Firms, There were certain lacunas in th said documents and therefore, the said documents were reverted back to the applicants. It is further submitted that after compliance, the documents were never sent to the Registrar of Firms. The I.O. has recorded statement of the Notary before whom the deed of partnership was registered. He has admitted that the papers were initially

submitted by the present applicants. However, in year 2009 itself, the applicants had been to the office of the Notary Advocate and had verified the documents. That he has signed the Register in his office showing that the documents have been verified. At this stage, prima facie, this would be sufficient to infer that the complainant had knowledge about the partnership deed having been notarized before the Advocate in the year 2009 itself. The learned Senior Counsel submits that it is in these circumstances that the complainant has not referred to the deed of partnership in the first information report. That the first information report suffers from suppression of facts.

10. The learned senior counsel has drawn attention of this Court to the agreement signed between the parties, pursuant to which the complainant had received an amount of Rs.3lakhs and odd. The statement of account is placed on record. According to the complainant, the said amount was never given to the complainant by the applicants, but it was given by Anthaya Education Society. The learned Senior Counsel submits that the applicants happen to be the trustees of the said Trust.

11. The learned counsel appearing for the complainant submits

that the amount which was transferred in his favour was not towards the consideration of the said property, but was a commission for arranging funds in the form of charity to the Anthaya Society. The learned counsel has placed implicit reliance upon the Declaration Deed signed between the complainant and Sukesh Shetty on 5.10.2009, wherein the parties had mutually agreed that smaller portion of the said property is valued at Rs.66,00,000/- and a larger portion would be valued at Rs.3,08,00,000/- and the total amount of consideration was enhanced to Rs.3,74,00,000/- from Rs.20,00,000/-. There is no reference to the said Declaration Deed in the first information report. The learned Senior Counsel submits that the reason for initiating criminal prosecution against the applicants was that the applicants had refused to make further payments since the complainant was in the process of creating third party interest in respect of the same property which was already sold to the applicants.

12. There are disputed facts. There is no reason why the statement of the Notary should not be relied upon. The police had initially made an enquiry into the report filed by the present applicants against the complainant and after thorough enquiry had arrived at a conclusion that the dispute between the parties is of a civil in nature and that they should

ventilate their grievances before the Civil Court by taking appropriate steps. It had further transpired that no cognizable offence was made out on the basis of the complaint filed by the present applicants. However, the report filed by the complainant was taken into consideration and offences are registered against the applicants.

13. The learned Senior Counsel submits that the Investigating officer has obtained the specimen signatures of all concerned and sent it to the handwriting expert. The report of the handwriting expert is awaited. The case rests upon the documentary evidence. The learned Senior Counsel submits that all the offences alleged against the applicants are triable by the Court of Magistrate. That they have been protected, by way of interim relief, since October 2014. The grievances are answered since the complainant has already created third party interest and the applicants have not put the complainant to any loss by making any benefit for themselves. That the applicants have co-operated with the investigating agency. In view of this, the applicants deserve anticipatory bail.

14. However, it is made clear that the observations made hereinabove are restricted to consider the application under Section 438 of

Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

(i) In the event of their arrest, the applicants be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

(ii) The applicants shall report to the concerned police station on 12th and 13th August, 2015 and co-operate with the investigating agency to the best of their capacity and also submit the documents which are in their possession.

(iii) The applicants shall not threaten the witnesses in the present case.

Application stands disposed of.

15. The Intervention Application is heard, allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)