

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1314 OF 2014

1 Mrs. Bharati Bharat Shah.
2 Mr. Haresh Rajnikant Shah. ... Applicants.

Versus

The State of Maharashtra. ... Respondent.

Mr. Aniket U. Nikam, advocate for Applicants.

Mr. Arfan Sait, APP for State.

Mr. Vishwajit Khule, Inspector of Police, Hinjewadi Police Station.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : JANUARY 9, 2015

P.C.:

1 Heard the learned Counsel for the applicants and the learned
APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal
Procedure, 1973. The applicants herein are apprehending their

arrest in Crime No. 603 of 2013 registered at Hinjewadi Police Station for offence punishable under Section 406, 467, 468, 469, 470, 420 read with Section 34 of the Indian Penal Code.

3 It is the case of the prosecution that the applicants herein are engaged in trading of industrial hardware and they are running business from Wapi, Gujarat. On 22nd December, 2013 Rajkumar Punjabi lodged a report at the police station alleging therein that he was acquainted with Nilesh Tanna, Bharat Shaha and his family i.e. the present applicants and brother of Bharat Shah. That they were running realities firm in the name and style of N. Square Realities & Pvt. Ltd. Company. That Mr. Tanna and Mr. Bharat Shaha had impressed upon the complainant that they have purchased about 200 acres of agricultural land by executing Memorandum of Understandings with several farmers. Hence, in November, 2011 it was agreed that they would purchase 50 acres of land. Mr. Tanna and Mr. Shaha had shown the complainant copies of the Memorandum of Understandings as far as 200 acres of land was

concerned. The complainant was induced to contribute in the firm and accordingly, he had contributed Rs. 12 Crores in the said firm. Subsequently, the partners of N.H.K. Developers had refused to show any documents to the complainant.

4 The complainant had learnt that N.H.K. Developers and Anirudha Deshpande were to purchase land at Maruji. The complainant had contacted Mr. Anirudha Deshpande on 23rd April, 2013. Mr. Deshpande had disclosed that he is not acquainted with any N.H.K. Developers and Nilesh Tanna and that he has no transaction with them whatsoever. The partners of N.H.K. Developers had shown 40 Memorandum of Understandings to the complainant. They were photo copies. The complainant had realised that the signatures of the alleged farmers were forged and all the documents were fabricated. Investigation was set in motion.

5 Mr. Bharat Shah and Mr. Suresh Shah were arrested by the investigating agency. By an order dated 8/8/2014, this Court

(Coram: Abhay M. Thipsay, J) has been pleased to grant bail to the accused under Section 439 of the Code of Criminal Procedure, 1973 after perusing the statements and documents and the papers of investigation. The Hon'ble Court had observed that -

“7 Considering the statements recorded in the course of investigation and all other relevant aspects of the matter, the possibility of the applicants not being aware of what Nilesh Tanna was doing, cannot be ruled out. This view is strengthened by the fact that about five criminal cases of offences of similar nature are pending against said Nilesh Tanna, but except the present one, no other case of any offence has been registered at any time against the applicants or members of their family.

8 The investigating agency has also projected the said Nilesh Tanna, as the main accused. Ironically, Nilesh Tanna enjoys interim protection granted by the Court of Sessions in anticipatory bail application filed by him, which is pending.”

6 The learned Counsel for the applicants has vehemently submitted that the present applicants have their independent trading firms. They were partners in N.H.K. Developers only by virtue of their

relationship with Mr. Bharat Shah and Suresh Shah. That they had no knowledge of the transactions of N.H.K. Developers.

7 Learned APP with the assistance of the learned Counsel appearing for the Intervenor has also vehemently submitted that the present applicants are the signatories of the Memorandum of Understandings with the farmers as far as 200 acres of land is concerned. It is a matter of record that the said MOUs were shown to the complainant only to induce him to become a partner in N.H.K. Developers. Admittedly, they are not the signatories to the MOUs for purchase of 40 acres of land which is purportedly purchased by Nilesh Tanna, Bharat Shah and Suresh Shah. In view of this, present applicant deserve pre-arrest bail.

8 Investigation is almost completed and custodial interrogation of the applicants would not be imperative as far as they undertake to cooperate with the investigating agency to the best of their capacity.

9 The observations made herein above are prima facie in nature for considering application under section 438 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding discharge application or quashing of FIR or at the time of trial.

10 In view of the above, following order is passed :

ORDER

- (i) The application is allowed.

- (ii) In the event of arrest in Crime No. 603/2013, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- each and one or two sureties in the like amount.

- (iii) The applicants shall not tamper with the evidence.

- (iv) The applicant No. 1 shall report to the police station as and when called. However, the applicant No. 2 shall report to the

concerned police station on four consecutive Sundays commencing from 18/1/2015 between 10 a.m. to 12 noon.

11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)