

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1512 OF 2014

1 Asgarali Akbarali Vagher
2 Huzaifa Saifuddin Bhusawalwala. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Rohan Nagar a/w. Mr. Paras Yadav, advocate for Applicants.

Mr. Rajesh More, APP for State.

Mr. C.V.Kamble, PSI, Lonavala City Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 17, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused the papers. Leave to add/amend.
Amendment to be carried out forthwith.

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. 120 of 2014 registered at Lonavala City Police Station

on 31/8/2014 for offence punishable under Section 420, 467, 468, 471 read with section 34 of the Indian Penal Code.

3 At the threshold after arguing for some time, the learned Counsel for the applicant seeks liberty to withdraw the application of the applicant No. 1 and seeks time to surrender before the concerned Magistrate. The liberty and time as prayed for is granted. In view of this, this application is restricted to the applicant No. 2.

4 It is the case of the prosecution that on 31st August, 2014, the complainant Pradeep Lunia lodged a report at Lonawala Police Station alleging therein that on 2/3/2013 he had purchased survey No. 79/1 admeasuring 18.7 R from Rasiklal Chavada by a registered sale deed. His name is entered in the column of ownership and possessor in the 7/12 extract. He has paid Rs. 30 Lakhs towards consideration to Rasiklal Chawda. He had decided to sell the said property and therefore, had given a public notice calling upon objection, if any. At that juncture, the complainant had received a

notice from the advocate of the present applicant No. 1 and one Arif Shaikh who had raised their objections on the ground that they had entered into an agreement for sale with Rasiklal Chawda. He had paid consideration to Rasiklal Chawda. The complainant was shocked as he was aware that since 2012 Rasiklal Chawda had never come to India. He made enquiries and got it confirmed from Rasiklal Chawda that he had not visited India during that period. To substantiate the claim, the applicant No. 1 has shown an agreement to sale executed between the applicant No. 1 and Rasiklal Chawda in presence of his manager Hasmukh Parej and affirmed by Mrs. Jyotsna Godambe and Nitin Godambe through their constituted attorney, accused No. 3 Adam Saifuddin Busawalwala.

5 The learned Counsel for the applicant submits that the present applicant No. 2 had no role to play in the said transaction as he was only a contractor, who had taken work of development of the said project.

6 Perused the documents in the form of agreement to sale which would show that Shri Rasiklal Chawda had signed and delivered the property in the presence of Hasmukh Parej. The said non-judicial stamp is neither registered document nor a notarised document. It is apparent that the said document, upon which the applicant No. 1 wanted to establish his claim cannot be substantiated. The learned APP fairly submits that the applicant No. 2 was only a contractor, who had taken the work of developing the project. At the time of taking work for development, it is not necessary for the contractor to see as to whether the owner of land has a better title. Hence, the applicant No. 2 deserves for grant of pre-arrest bail.

7 The observations made hereinabove are prima facie in nature. The same shall not be considered while deciding the application for discharge or quashing of FIR or at the time of trial. The learned trial Court shall decide the matter on its own merits in accordance with law uninfluenced by the above observations.

8 In view of this, following order is passed.

ORDER

- (i) The application is partly allowed.
- (ii) The application in so far as applicant No. 1 is concerned, the same is dismissed as withdrawn. The applicant No. 1 stands protected till 5 p.m. of 24/7/2015.
- (iii) The application in so far as applicant No. 2 is concerned, the same is allowed.
- (iv) In the event of arrest, the applicant No. 2 be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or two sureties in like amount.
- (v) The applicant No. 2 shall report to police station as and when called.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)