

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2596 OF 2014

Mohan Laxman Pathare

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Chandrakant Talekar Advocate for Applicant
Ms. S. S. Kaushik APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 26th JUNE, 2015

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 24/06/2013 in crime no. 166 of 2013 registered at M.H.B. Police Station for offence punishable under sections 420, 406 r/w 34 of Indian Penal Code. Investigation is completed and charge-sheet is filed. Case is registered as C. C. No. 6802098/PW/2013.

2) On 15/06/2015, learned APP had made a statement that charge was framed on 12/03/2014 and it was not known as to why Magistrate has chosen not to proceed with the trial. Learned APP upon instructions had made a statement that trial is fixed for recording of evidence on 22/06/2015. Learned counsel for the applicant has placed on record the copy of Rozanama which

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shows that witness summons were issued on 22/06/2015 below Exhibit 52. Learned counsel for the applicant vehemently submits that case is triable in the Court of Magistrate. He has been in jail for more than 2 years and prima facie on this ground, he deserves to be enlarged on bail. However, it is necessary to go into the merits of the matter.

3) It is the case of prosecution that on 25/05/2013, complainant Shri. Surendra Nair lodged a report at M.H.B. Police Station alleging therein that since he could not purchase agricultural land in his own name, since he is not an agriculturist by profession and therefore, the land was purchased in the name of present applicant. The land was purchased for a consideration of Rs. 18,00,000/-. Applicant was to receive a commission of 20% since the land was purchased in his name. Complainant had transferred Rs. 14,00,000/- by cheque in favour of applicant and Rs. 7,00,000/- were given in cash. Applicant is alleged to have executed a receipt to that extent. It is further alleged that applicant herein, taking an advantage of the fact that land was purchased in his name was intending to sell the land. Applicant is alleged to have informed the complainant in the year 2011 that they should sell the land and that they would receive a good consideration of Rs. 1,80,00,000/-.

Applicant is also alleged to have offered to purchase the said land for consideration of Rs. 1,30,00,000/-. By deducting 20% commission, complainant had agreed to sell the land for Rs. 1,30,00,000/- in favour of present applicant. There was an understanding between the parties that applicant would pay Rs. 25,00,000/- by February 2011 and thereafter, he would pay Rs. 25,00,000/- per month. It appears from the recitals of complaint that applicant had evaded to pay the agreed amount. It is also alleged that applicant had fraudulently transferred the land in the name of accused no. 4. Accused no. 4 has been granted pre-arrest bail. Applicant is alleged to extended 4 cheques in favour of complainant, but the said cheques were dishonoured.

4) Learned counsel appearing for original complainant makes a statement that no case is filed against applicant under section 138 of Negotiable Instruments Act. In view of this, according to complainant, he was cheated by applicant.

5) Learned counsel for the applicant submits that this is a transaction between two parties. That according to learned counsel, at the inception itself, complainant could not purchase the land and therefore had fraudulently

entered into Benami transaction.

6) Taking into consideration the fact that applicant has been in jail for more than 2 years and the trial could not proceed for no fault of the applicant, this Court is inclined to enlarge the applicant on bail. It is made clear that observations made herein above are prima facie in nature and shall not be considered at the time of trial. Applicant shall make himself available for the trial on each and every date. Upon failure to attend any two consecutive dates, prosecution would be at liberty to file an application seeking cancellation bail. Applicant shall be produced from the jail before the trial Court on 29/06/2015 without fail. Learned Magistrate shall proceed with the trial, without being influenced by the fact that applicant has been enlarged on bail.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P. R. bond in the sum of Rs. 50,000/- with one or two solvent sureties in the like amount.
- (iii) Applicant shall attend the trial Court on each and every date.
- (iv) Upon failure to attend any two consecutive dates, prosecution would be at liberty to seek cancellation of bail.

- (v) It is made clear that trial shall not be stalled.
- (vi) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)