IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1895 OF 2015

Rajesh Kumar Sharma ... Applicant
Vs.
The State of Maharashtra ... Respondent

ALONGWITH
CRIMINAL APPLICATION NO.26 OF 2016

Rahul Subhash Jaju ... Intervener

In the matter between

Rajesh Kumar Sharma ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. Rajneesh Agarwal, Adv. a/w. Vivek Babar, Adv. i/b. Prabhat Dubey, Adv. for the applicant in ABA.
Mr. D.P. Adsule, APP for the State.
Mrs. Mallika A Ingale, Adv. for the intervener in APPP.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 29th February, 2016.

P.C. :

1. This is an application for anticipatory bail filed by the aforesaid applicant apprehending his arrest in Crime No.285 of 2015 registered with Sarkarwada Police Station, Nashik for offences punishable under Sections 420 & 506 of the IPC.

2. The aforesaid crime was registered pursuant to the FIR dated 23rd August, 2015 lodged by one Rahul Jaju. The averments in the FIR are that said Rahul and one Shamsuddin Parkar had participated in auction conducted by Bank of India, Andheri, Mumbai

in February, 2014 and had purchased a plot of land for total consideration of Rs.1.91 Crores. Out of the said sale consideration Mr. Parkar had paid Rs.48 lacs. The balance amount was to be deposited in the bank within the stipulated period of 15 days. The first informant and the said Parkar were unable to deposit the said amount within the stipulated time. Hence they availed services of the applicant for extension of time. The applicant was paid Rs.6 alcs towards the professional help rendered by him.

3. The first informant had alleged that he had deposited Rs.20 lacs in the account of one Deepak Jagtap in Raisoni Patsanstha (Financial Institution), Nasik and that said Deepak had given two demand drafts No.073754 & 073755 for Rs.10 lacs each in favour of BOI. The first informant has alleged that the said DDs were handed over to the applicant with instructions to deposit the same in the BOI. It is alleged that the applicant herein did not deposit the said DDs in the bank account but deposited the same in his personal account. The first informant has also alleged that the applicant had neither got the time extended nor had returned Rs.6 lacs which was paid to him for getting the time extended. The first informant, therefore, claimed that the applicant had cheated them by depositing the said DDs in his

personal account instead of account of BOI.

4. The applicant had filed an application for anticipatory bail before the Sessions Court, Nasik. The said application came to be dismissed by order dated 4th December, 2015. Hence the present application.

5. Mr. Agarwal, the learned counsel for the applicant has submitted that the applicant is a Chartered Accountant by profession. The first informant and Mr. Parkar had participated in an auction held by the bank and had purchased a property for Rs.1.91 Crores. They had deposited Rs.48 lacs but were unable to deposit the balance amount within 15 days and hence they had approached the applicant to get the time extended. The learned counsel for the applicant has submitted that the first informant and Mr. Parkar had paid Rs.6 lacs to the applicant as his professional fees and accordingly the applicant had got the time extended from time to time. It is further submitted that since the first informant and Mr. Parkar were unable to deposit the balance amount within the stipulated time, they had approached the applicant to pay part of the amount and accordingly he had transferred an amount of Rs.28 lacs in the account of Mrs. Parkar.

The learned counsel for the applicant has submitted that the first informant and Mr. Parkar had assured to pay to the applicant an amount of Rs.20 lacs towards service charges and returns on investment. The learned counsel for the applicant has submitted that the first informant had issued two cheques for Rs.10 lacs each towards payment of his service charges and returns. The learned counsel for the applicant has placed on record the letter dated 24th February, 2016 as well as letter dated 27th June, 2014 and a copy of the cheque to indicate that the said two cheques which were issued by Axix Bank for Rs.20 lacs were dishonoured and that subsequently the first informant had requested the applicant to deposit the DDs in his account and in addition had given a cheque for Rs.20 lacs in the event the said DD was not cleared. The learned counsel for the applicant has submitted that the first informant and Mr. Parkar were unable to arrange for the balance amount and consequently the said sale transaction was cancelled and Rs.48 lacs deposited by Parkar was forfeited. Which has resulted in filing of the present FIR after almost a period of one year, with malafide intention.

6. Mrs. Ingale, the learned counsel for the intervener / first informant has submitted that the first informant and Mr. Parkar were successful bidders in auction conducted by BOI and they had paid

Rs.48 lacs towards part consideration and since they were unable to pay full payment they had engaged the services of the applicant for getting the time extended. She has further submitted that the applicant had not taken any steps to get the time extended and had also not returned the amount of Rs.6 lacs which was paid towards his professional charges. She has further submitted that the applicant had deposited Rs.28 lacs in the account of Mr. Parkar as he apprehended that the sale would be cancelled. She has submitted that the applicant had failed to get the time extended and as such the bank had cancelled the sale transaction and forfeited an amount of Rs.48 lacs. She has further submitted that the two DDs for to Rs.10 lacs each were handed over to the applicant with instructions to deposit the same in the BOI towards part of sale consideration. She has submitted that the applicant instead of depositing the said amount in the BOI had deposited the same in his personal account.

7. The learned counsel for the intervener has further submitted that the letters produced before this Court were not produced before the Sessions Court and this fact clearly indicates that the same are fabricated. She has further submitted that the first informant had already written a letter to the bank on 6th May, 2014

with instructions to stop payment of the said two cheques as the cheque which were sought to be deposited were stolen.

8. Mr. Adsule, the learned APP for the State has submitted that the investigation prima facie reveals that the said cheques are deposited in the loan account of the applicant. He therefore contends that the crime needs to be investigated and thus the presence of the applicant is required for custodial interrogation.

9. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

10. The records prima facie reveal that the first informant and one Parkar had participated in an auction held by BOI and had purchased a plot for total consideration of Rs.1.91 Crores. Mr. Parkar had deposited an amount of Rs.48 lacs. As per the terms and conditions of the bank, he was required to deposit the balance amount within 15 days. The records reveal that the first informant and said Mr. Parkar were unable to deposit the balance amount within stipulated time and hence they had approached the applicant, who is CA by profession, to get the time extended. It is not in dispute that the applicant was paid Rs.6 lacs towards his professional fees.

11. The letter dated 17th July, 2014 of the bank prima facie reveals that the time to pay the balance amount was extended from 4th March, 2014 to 27th March, 2014 and further till 29th April, 2014. The records prima facie indicate that the applicant herein had deposited Rs.28 lacs in the account of Mrs. Parkar. The perusal of the FIR prima facie indicates that the first informant had not disclosed this fact in the FIR. The first informant had also not given any reasons for transfer of the said amount in the account of Mrs. Parkar.

12. It is also to be noted that the first informant had not issued any DD for Rs.20 lacs in favour of the applicant but the FIR indicates that he had deposited amount of Rs.20 lacs in the account of one Deepak Jagtap in Raisoni Pathsanstha (Financial Institution) Ltd. that said Deepak had issued two DDs bearing Nos.073754 & 073755 for Rs.10 lacs each. It is alleged that the said DDs were handed over to the applicant through Sandip Kankaria and Oswal. The first informant has alleged that upon enquiry, he had learnt that the said amount of Rs.20 lacs was not deposited in the bank. It is pertinent to note that the balance amount to be paid to the BOI was Rs.1.43 Crores and not Rs.20 lacs which was allegedly paid by aforesaid two DDs.

13. It is also to be noted that the said cheques referred to in FIR as demand drafts were initially deposited in the bank on 24th June, 2014. The letter dated 24th February, 2016 issued by the Chief Manager of the BOI prima facie reveals that the said cheque Nos.073754 & 673755 were presented for clearance on 24th June, 2014 and were dishonoured by Axis Bank on account of funds insufficient. The FIR does not prima facie disclose said fact.

14. The applicant has also placed on record a copy of the letter dated 27th June, 2014 which prima facie indicates that the first informant had apologized for dishonour of the said cheque or DD and had requested the applicant to deposit the same again and had further stated that he would issue another cheque in the event the DDs were not cleared. The records reveal that the said cheques were presented again on 27th June, 2014 and were cleared on the same date.

15. In the light of the above facts and also considering delay in lodging the FIR, in my considered view, the nature of allegations levelled against to applicant do not justify custodial interrogation. Mr. Agarwal, the learned counsel for the applicant has submitted that the applicant has already joined the investigation and has reported to

the investigating officer on 8 occasions which fact is also confirmed by the learned APP for the State. Even otherwise the applicant is a Chartered Accountant and is a permanent resident of Mumbai and hence there is no possibility of the applicant absconding and thwarting the course of justice.

16. Considering all the above facts and circumstances the applicant is granted pre-arrest bail on the following terms and conditions.

(i) In the event of arrest of the applicant in Crime No.285 of 2015 registered with Sarkarwada Police Station, Nashik, the applicant shall be released on furnishing bail bond of Rs.25,000/ (Rupees Twenty five thousand Only) with one or two sureties in the like amount to the satisfaction of the Addl. Sessions Judge, Nashik.

(ii) The applicant shall report to the investigating officer as and when required by the investigating officer.

17. In view of the disposal of the anticipatory bail application, intervention application also disposed of accordingly.

(ANUJA PRABHUDESSAI, J.)