IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.110 OF 2016

Laxman Tukaram Nimbalkar	…	Applicant
Vs.		
The State of Maharashtra	…	Respondent

Mr. Satyam Dubey, Adv. for the applicant.
Mr. D.P.Adsule, APP for the State.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 4th March, 2016.

P.C. :

1. This is an application for anticipatory bail filed by the aforesaid applicant apprehending his arrest in Crime No.99 of 2015 registered with Mahad City Police Station for offences punishable under Sections 464, 465, 467, 468, 469 & 471 r/w. 34 of the IPC.

2. The complainant Vishwas Pandav had lodged a complaint before the Judicial Magistrate First Class, Mahad. Pursuant to the order under Section 156(3) of Cr.P.C. passed in the said complaint the above crime came to be registered. The imputations against the applicant are that some time in year 2012, the applicant as a broker had told the complainant Vishwav Pandav that the property under survey No.12, sub division No.4 situated at Mouje-Vahur, Tal. Mahad, Dist. Raigad which was owned by the co-accused was for sale. The

applicant is alleged to have taken Rs.3.5 lacs towards brokerage charges. It is also alleged that the applicant and the other co-accused had shown forged and fabricated 7/12 extract in respect of the said property and had induced the complainant to enter into an agreement in respect of the said property and further pay an amount of Rs.3.5 lacs to the other co-accused who claimed to be the owner of the said property. The complainant claimed that he subsequently learnt that the property was not owned by the other co-accused and the applicant herein had deceived him by representing to him that the property belonged to other co-accused and further induced him in making payment towards brokerage charges as well as the sale consideration to the other co-accused.

3. Mr. Dubey, the learned counsel for the applicant has submitted that the complainant has not disclosed the material facts. He has placed on record the receipt in respect of the earnest money which was signed by the complainant and his wife and also the receipt issued by the complainant for receipt of Rs.3.5 lacs. He has submitted that the complainant suppressed the fact that he had entered into a transaction for purchase of land under survey No.12, sub division No.4 and that he had paid the said money as earnest money towards the purchase of the said land. The learned counsel for

the applicant has submitted that the complainant had failed to pay the balance amount and hence the said sale transaction could not be completed. He has submitted that the applicant has been falsely implicated in the crime, in view of the previous dispute.

4. Mr. Adsule, the learned APP for the State has submitted that the material on record prima facie indicates that the applicant has received money from the complainant. The FIR discloses that the applicant had induced the complainant in paying Rs.3.5 lacs as brokerage charges as well as in paying the consideration of Rs.3.5 lacs to the other co-accused. He has further submitted that the entire transaction was based on forged and fabricated 7/12 extract. The learned APP has submitted that the FIR as well as the other material on record prima facie shows complicity of the applicant in the said crime.

5. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties. The FIR prima facie indicate that some time in 2012 the complainant had approached the applicant and informed him that he was interested in purchase of land. The applicant who is a broker, had informed the

complainant that the property under survey No.12, sub division No.4 situated at Mauje-Vahur was owned by the co-accused No.2 and that the said property was for sale. The FIR further states that the complainant had paid Rs.3.5 lacs to the applicant under receipt Nos.231 and 232 dated 8th November, 2012 and 9th November, 2012. The complainant had further stated that he had entered into an agreement dated 11th September, 2013 with the co-accused on the basis of forged and fabricated 7/12 extract furnished to him by the applicant and the other co-accused. The complainant had stated that despite several requests the co-accused had declined to furnish copy of the 7/12 extract where the names of the vendors are recorded and that in the year 2015 when he obtained the copy of 7/12 extract he realised that the said property was in the name of Dawood Mohammad Ali and others. The complainant therefore filed a complaint and pursuant to which order passed under Section 156(3) of the Cr.P.C. and aforesaid crime came to be registered.

6. At the outset it may be mentioned that the alleged transaction is of year 2012. The complaint / application under Section 156(3) was filed in the year 2015. There is considerable delay in approaching the Court. Furthermore the receipt placed on

record by the applicant and which is duly signed by the complainant prima facie reveals that there was another transaction between applicant and the complainant towards purchase of the land under survey No.171, sub division No.17/3. Money allegedly paid under receipt dated 8th November, 2012 and 9th November, 2012 under receipt Nos.231 and 232 was paid in respect of the said sale transaction. The records prima facie reveal that complainant had not only suppressed the said fact but had stated that the money paid under the receipt was towards the sale transaction of the land under survey No.12, sub division No.4. The above facts as also the delay in lodging the complaint, in my considered view, would not justify custodial interrogation. Under the circumstances and otherwise the applicant is permanent resident of Raigad there is no possibility of him absconding or thwarting the course of justice.

7. In view of the discussion supra, the application is allowed on the following terms and conditions.

i. In the event of arrest of the applicant in Crime No.99 of 2015 registered with Mahad City Police Station, 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 JMFC, Mahad.

ii. The applicant shall report to investigating officer for 7 days from 10 am to 1 pm from the date of receipt of this order.

iii. The applicant shall not leave Raigad district till filing of the chargesheet without prior permission of the Court.

(ANUJA PRABHUDESSAI, J.)