Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 201 OF 2015

1. Akbar Mohammed Ali Kazi
2. Umakant Pralhad Jagdale
3. Yusuf Nawab Khan ... Applicants

Vs.

The State of Maharashtra ... Respondent

CRIMINAL APPLICATION NO. 384 OF 2015
IN
ANTICIPATORY BAIL APPLICATION NO. 201 OF 2015

Smt. Komal Vinayak Devlekar … Applicant/ Intervener
in the matter between

1. Akbar Mohammed Ali Kazi
2. Umakant Pralhad Jagdale
3. Yusuf Nawab Khan ... Applicants

Vs.

The State of Maharashtra ... Respondent

CRIMINAL APPLICATION NO. 57 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO. 201 OF 2015

Prashant Vasant Nikam … Applicant/ Intervener
in the matter between

1. Akbar Mohammed Ali Kazi
2. Umakant Pralhad Jagdale
3. Yusuf Nawab Khan ... Applicants

Vs.

The State of Maharashtra ... Respondent

Mr. Nitin P. Dalvi, Advocate for the applicants.
Mr. Rajiv Patil, Senior Advocate a/w. Ms. Sanchita Thakur i/b. Priyanka Thakur, for the intervener in APPP/57/2016.
Mrs. P.P. Shinde, APP for the State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **12th April, 2016.**

P.C.:

Criminal Application No. 201 of 2015 is moved for anticipatory bail, as the applicants/accused are facing charges under sections 420, 406, 465, 467, 468, 471, 506 r/w. 34 of the Indian Penal Code in C.R. No. 418 of 2014 registered with R.A.K. Marg Police Station. The offence is registered on 9th December, 2014 at the instance of Prashant Vasant Nikam.

2. It is the case of the prosecution that the complainant wanted to purchase a house and in June, 2012 he was introduced to accused no. 1, who is the owner of M/s. Evergreen Developers. Applicant no. 1 told him that in one building under SRA at Antop Hill 3 to 4 tenements are available for sale, so the complainant booked one tenement no. 504 in Rambaug. The applicant/accused no. 1 quoted the price of Rs.38 lakhs of the said room. On demand of applicant/accused no. 1, complainant gave a token money of Rs.1,00,000/- and receipt of the said amount was given by applicant/accused Yusuf Khan. On 23rd June, 2012 the complainant paid total amount of Rs.14 lakhs, out of which Rs.9.50 lakhs was by cash and Rs.4.50 lakhs by cheque. However, co-accused Priyanka Ghorpade told the complainant to give a blank cheque of Rs.4.50 lakhs and subsequently the said cheque was cleared in the account of M/s. Landscape. Priyanka Ghorpade issued the receipts of Rs.14 lakhs to the complainant. Thereafter, applicant no. 1 demanded balance amount and so the complainant gave cash of Rs.23 lakhs on 7th July, 2012 to Priyanka Ghorpade against which she gave receipts. Applicant/accused no. 1 gave

key of the said room to the complainant and promised him to handover the papers. Subsequently he was called and executed the Power of Attorney and in the sale deed it was mentioned that Arun Naidu is not in a possession to take care of the said room so he sold that room for Rs.10 lakhs to the complainant. It is the case of the complainant that at the time of execution of the sale deed and power of attorney, Arun Naidu was not present. The possession of the said room was given to the complainant on 12th February, 2013 and he started residing there. In April, 2013 Arun Naidu came to his room and told that the said room is alloted to him by SRA and the applicant/accused no. 1 has illegally sold the said room to him. For the first time, the complainant met Arun Naidu and Arun Naidu refused the execution of sale deed and power of attorney. So, the complainant enquired about this transaction to applicant/accused no. 1. According to the complainant, though accused no. 1 accepted such bogus transaction, he refused to return the money. Applicant no. 2 threatened the complainant that he should not give any complaint against applicant no. 1 otherwise he would face dire consequences. Thereafter, the complainant gave complaint to the police.

3. The learned counsel for the applicants/accused has submitted that the case of the complainant is false and bogus. The learned counsel submitted that the complainant did not receive the amount of Rs.60 lakhs

as stated in the FIR before the transaction of room no. 504. He submitted that the complainant has different transaction with M/s. Landscape and applicant/accused no. 1 is not concerned with Landscape. He submitted that the owners of Landscape are Komal Vinayak and Shailesh Vinayak Devlekar. The said amount was given to Landscape. He further submitted that Priyanka Ghorpade has refused that at any stage she issued various receipts of the amounts. He further submitted that Arun Naidu has filed the suit, however, no relief is granted to him. Applicant nos. 2 and 3 are in the employment of applicant no. 1.

4. Learned APP and learned counsel for the complainant/intervener both opposed this Application. Learned APP relied on the affidavit of Sharad Nivrutti Ovhal, P.I. filed on 25th February, 2015 and so also affidavit dated 4th September, 2015. She submitted that the custody of applicants/accused are required in order to verify the documents and also to find out the exact nature of the transaction.

5. Perused the FIR and other documents. The police have enquired co-accused Priyanka Ghorpade and also recorded the statement of Shailesh Vinayak Devlekar, owner of M/s. Landscape. Shailesh Devlekar told that the complainant has returned Rs.4.50 lakhs which he has borrowed from father of Shailesh Devlekar. It appears that the police needs to investigate

about the truthfulness of the statement of witnesses by countering those with the applicants/accused. Applicant no. 1 has taken up SRA project at Antop Hill and Priyanka Ghorpade was working with him as telephone operator and doing other office work, however, she has denied her signature on the receipts. Therefore, it is necessary to find out from the accused who made her signature. So also, in the present case, fake power of attorney and bogus sale deed of Arun Naidu is used and the complainant was deceived, as he has paid Rs.38 lakhs to applicant/accused no.1. Under such circumstances, pre-arrest bail is not granted to the applicant no. 1-Akbar Mohammed Ali Kazi. However, I am inclined to grant pre-arrest bail to applicant no. 2-Umakant Pralhad Jagdale and applicant no. 3-Yusuf Nawab Khan on the following terms and conditions:

O R D E R

(i) In the event of arrest, the applicant no. 2-Umakant Pralhad Jagdale and applicant no. 3-Yusuf Nawab Khan be enlarged on bail on furnishing P.R. Bond in a sum of Rs.25,000/- each with one or two sureties in the like amount;

(ii) The applicants shall not tamper with the evidence;

(iii) The applicants shall not pressurize the complainant;

(iv) The applicants shall not indulge into any criminal activity, while on bail;

(v) The applicants shall cooperate the Investigating officer and shall attend the concerned police station on every Monday and Friday between 6 p.m. to 8 p.m.

(vi) The applicants shall not leave India without the prior permission of the Court.

6. The Application for anticipatory bail stands disposed of on above terms. Criminal Application Nos. 384 of 2015 and 57 of 2016 are also accordingly disposed of.

(MRIDULA BHATKAR, J.)