

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.528 OF 2015
IN
ANTICIPATORY BAIL APPLICATION NO.1299 OF 2014

Dr. Nathuram R. Rohila	... Applicant/ Ori. Complainant
vs.	
The State of Maharashtra and Another	... Respondents

WITH
CRIMINAL APPLICATION NO.358 OF 2016

The State of Maharashtra	... Applicant
vs.	
Devendra Shrihari Pagare	... Respondent/ Ori. Accused

Dr. Nathuram R. Rohila, the applicant/original Complainant party-in-person present.
Mrs. P.P. Shinde, APP for the State.
Mr. Samir Vaidya, for Respondent/Accused.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **28th APRIL, 2016**

P.C.:

. The criminal application No. 528 of 2015 is filed by the original complainant and criminal application No. 358 of 2016 is filed by the prosecution for cancellation of the pre arrest bail granted to the Respondent-accused Devendra Pagare by this Court in

Anticipatory Bail Application No. 1299 of 2014 by its order dated 15th April, 2015. Both these applications are heard and decided together by a common order.

2. The Respondent/accused is facing charges for the offences punishable under Sections 420 and 406 read with 34 of the Indian Penal Code in C.R. No. 6 of 2014 registered with Govandi police station. The offence is registered at the instance of one Dr. Nathuram Rohila on 6th January, 2014.

3. It is the case of the prosecution that the complainant is a retired senior scientist from Bhabha Atomic Research Center. It is his case that after retirement, he wanted to buy some premises to open a Lab and therefore he selected area of Chembur and Govandi for the same. During that period, his son Vivek came across with the applicant/accused as he represented that he was working as Vigilance Officer in the Health Department of B.M.C. and he was also in the business of building construction and development and running a business in the name of “M/s. Malhar Developers” along with his wife. The complainant and his son trusted him and the Respondent-

accused showed them one flat No. 1203, 12th Floor, Kukreja Residency, Deonar. He represented that the said flat is owned by one investor and the said person was interested in selling his flat. Therefore, the complainant agreed to buy the said flat for Rs. 1 Crore and towards the initial payment paid Rs. 33 lacs to the Respondent-accused. Thereafter, time to time the payments were made by the complainant through R.T.G.S. transfer and cheques. Thus in total Rs. 44 lacs were deposited in the account of “M/s. Malhar Developers”. However, the Respondent-accused did not execute any document in favour of the complainant in respect of the possession of the said flat. The Respondent-accused did not reply the complainant or his son and stopped contacting with them and switched off his phone. The complainant then realised that he was cheated for Rs. 44 lacs by the Respondent-accused. Hence, he gave complaint against the Respondent-accused on 6th January, 2014.

4. The learned counsel for the Respondent-accused has submitted that the Respondent-accused is innocent. He submitted that there is history to this case. Two sons of the complainant namely Vivek and Vinod were also involved in the same project which was to

be launched by M/s. Malhar Developers. They collected money from 5-6 persons for flats in the building which was to be constructed by M/s. Malhar Developers. However, the buildings could not be constructed and therefore one proposed flat purchaser Mr. Anil Pradhan gave complaint at Trombay police station vide C.R. No. 74 of 2011 against the present Respondent-accused and two sons of complainant. He submitted that the present Respondent-accused thereafter repaid Rs. 1,22,000/- to the persons. He submitted that in the present case, the liability of the amount of Rs. 44 lacs was to be distributed amongst the Respondent-accused and also between two sons of the complainant. He submitted that the Respondent-accused himself alone is not liable to pay the entire amount to the complainant. He referred the order passed by the Division Bench of this Court dated 22nd October, 2013 in Writ Petition No. 130 of 2013 which was filed for quashing of complaint by the two sons of the complainant. He submitted that the Division Bench did not quash the complaint and the Respondent-accused repaid the entire amount. He submits that the present complainant filed the intervention application in Anticipatory Bail Application No. 859 of 2012. He submits that though the Respondent-accused repaid the entire

amount of other persons, money of the present complainant was remained to be returned and he submits that the Respondent-accused accept the said liability.

5. The learned counsel for the Respondent-accused further pointed out that the consent terms were filed in Anticipatory Bail Application No. 1299 of 2014 by the Respondent-accused on 15th April, 2015. He submits that the undertaking was given by the Respondent-accused to the complainant and it was not the undertaking given by the Respondent-accused to the Court. Therefore, he is not bound to pay anything. He submits that this undertaking is given to the complainant and it is not a breach of the undertaking given to the Court and therefore the pre arrest bail granted by this Court in Anticipatory Bail Application No. 1299 of 2014 is not to be cancelled.

6. The learned prosecutor and the complainant Dr. Nathuram Rohila-party in person submitted that by the order dated 15th April, 2015 it was directed to the Respondent-accused to attend the police station on 1st Saturday of every month, between 10 a.m and 11 a.m

till October, 2015 i.e. till realization of the final payment. The learned prosecutor submits that Respondent-accused neither attended the police station nor made the payments as per the consent terms filed on 15th June, 2015. She submits that till today not a single rupee is paid by the Respondent-accused to the complainant, as agreed. The residential address which is furnished by the Respondent-accused is also fake because the said house was already sold by the Respondent-accused in the year 2013. The police have recorded the statement of the Secretary of the said Society to that effect. She further submits this Court has issued notice to the Respondent-accused and pursuant to which he appeared before the Court and in presence of his advocate on 7th January, 2016 the Respondent-accused assured the Court that as per the undertaking given by him, he will pay Rs. 10 lacs as a first installment to the complainant on 7th January, 2016. However, he did not come before the Court thereafter. The relevant portion of the order dated 7th January, 2015 passed by this Court is as under:

Para 2 : By an order dated 13.7.2015 notice was issued to respondent no.2. Mr Deshpande, the learned Counsel appeared on 23.12.2015 and waived the notice of the present application for and on behalf of the said respondent No.2. By

an order dated 23.12.2015 the learned Counsel for respondent no.2 was directed to keep respondent no.2 personally present in this Court on 6.1.2016 at 3:00 p.m. Accordingly, the respondent no.2 remained present in this Court yesterday. The respondent no.2 through his learned Counsel assured this Court that as per the undertaking given by him, he shall pay the first instalment of Rs.10,00,000/to the complainant today i.e. on 7.1.2016 on or before 3:00 p.m. The present matter was called out at 3:00 p.m. when the learned Counsel expressed his inability to procure the presence of respondent no.2. As the respondent no.2 remained absent at 3:00 p.m. the matter was kept back for his attendance at 5:00 p.m. Neither the respondent no.2 nor his representative attended this Court in compliance with the further undertaking given on 6.1.2016.

7. My learned predecessor on the same day i.e. 7th January, 2016 has observed that the Respondent-accused never wanted to comply the undertaking given to the Court and therefore remained absent. Therefore, a non bailable warrant was issued against him. Today on 28th April, 2016 police submitted a report to the office of Government Pleader. It is taken on record and marked as 'Exhibit – 1'. It shows that the police had inquired about the Respondent-accused and his native place at Kopargaon, Dist. Ahmadnagar and recorded

statement of his brother Bhimrao Pagare. Police though have tried to find out the Respondent-accused, his whereabouts could not be traced. The police report discloses that the police have recorded the statements of one Arun to whom both the Respondent-accused have sold his residential premises in the year 2013 and of which the address is given in the Court. Therefore, the learned prosecutor submits that the pre arrest bail granted by this Court to the Respondent-accused is to be cancelled as there is breach of the terms and conditions.

8. The Dr. Nathuram Rohila-party in person has submitted that whatever allegations made against him and his two sons are false and his sons have not cheated anybody.

9. Perused the first information report and the orders passed by this Court on 15th April, 2015. The Court has recorded in para 4 of the said order as follows:

Para 4 : In view of the settlement between the parties, in the event of arrest, the applicant is directed to be released on bail on his furnishing P.R.Bond in the sum of Rs.50,000/with one or two solvent sureties in the like amount. It is made clear,

that this present application has not been considered on merits and has been allowed, only in view of the undertaking given by the applicant to this Court, to pay an amount of Rs.55,00,000/as set out in the Consent Terms. The applicant shall attend the Govandi Police Station, Mumbai on the 1st Saturday of every month, between 10.00 a.m. and 11.00 a.m. till October, 2015 i.e. till realization of the final payment. The applicant shall also furnish his residential address and contact number to the investigating officer, and if, there is any change in the residential address or contact number, the same will be informed by him to the investigating officer. If there is breach of the aforesaid undertaking, the prosecution/the complainant, will be at liberty to apply for cancellation of the applicant's anticipatory bail.

10. It shows that the Respondent-accused has represented before the Court that he would pay the total sum of Rs. 55 lacs. The learned counsel for the Respondent-accused has given undertaking to the Court. This Court also mentioned in para 4 that if there is breach of the aforesaid undertaking, the prosecution or the complainant will be at liberty to apply for cancellation of the anticipatory bail granted to the Respondent-accused. It is true that there is difference between the undertaking given by one party to other and undertaking given to

the Court. If there is breach of the undertaking given to other party that cannot be considered as breach of the undertaking given to the Court. However, after going through the order passed by this Court on 15th April, 2015, I hold a view that it was an undertaking given by the Respondent-accused to the Court. Thus, the submission of the learned counsel that the undertaking given to a party cannot be read as the undertaking given to the Court, is falsified.

11. The learned counsel for the Respondent-accused has submitted that the case was not decided on merit but it was decided only on the basis of consent terms. After going through the said order, it appears that the undertaking was given and therefore the Court has to only consider the said undertaking. However, as the matter is before the Court, I have considered the submission made by the learned counsel for the Respondent-accused and gave my finding on merit as follows.

12. On perusal of the first information report, it is clear that the Respondent-accused has represented that the flat No. 1203, 12th Floor, Kukreja Residency, Deonar was available for sale and he

accepted money of Rs. 44 lacs from the complainant. The payments were made by the complainant to the Respondent-accused through different modes. It is mentioned in the chart enclosed with the first information report. The money was transferred in the account of M/s. Malhar Developers of which the Respondent-accused is the sole proprietor. It is also brought on record that the Respondent-accused has repaid the money to some other persons and also to Mr. Anil Pradhan but not the complainant. From the submissions of learned counsel, it is clear that the Respondent-accused has accepted that he has received money. Under such circumstances, I am of the view that *prima facie* the Respondent-accused cannot be given any further protection. Moreover, the conduct of the Respondent-accused is also to be taken into account, as he had showed complete disrespect towards the orders passed by this Court. He is absconding since long. He has breached the undertaking given by this Court. Hence, these are the sufficient grounds to allow the applications of the prosecution and the complainant for cancellation of the anticipatory bail granted to the Respondent-accused.

13. Hence, the pre arrest bail granted to the

applicant/accused by this Court on 15th April, 2015 is hereby cancelled. The police to take note that this Court has already issued non bailable warrant against the applicant/accused.

14. A copy of this order is to be communicated to the Commissioner of Police, Mumbai.

15. Accordingly both the criminal applications stand disposed of on the above terms.

(MRIDULA BHATKAR, J.)