IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.952 OF 2016

Kashinath Pandurang Jadhav .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.Subodh Desai Aditya Sawant, Advocate for the applicant.

Mr.Subhash Jha with Ms.Rushita Jain, Advocate for original complainant.

Mr.H.J.Dedhia, APP for the Respondent State.

CORAM : P.N. DESHMUKH, J

DATED : 4th AUGUST 2016

P.C. :

1 This application is filed by accused apprehending his arrest in Crime No.122 of 2016 registered on 20th May 2016 by R.A. Kidwai Marg Police Station for offences punishable under Section 143 149, 323, 341 and 452 of the IPC.

2 Heard learned counsel for the parties at length. By consent of the learned counsel, application is decided finally. Also perused the documents filed in support of application and by learned APP and the Intervenor.

3 Learned counsel for the applicant by referring to the Memorandum of Understanding (MOU) dated 28th October 2015

had submitted that applicant has entered into an agreement with the complainant one Shri Sethi in respect of piece of land. However, inspite of applicant being in possession thereof, even prior to entering into such MOU, since complainant did not act upon the terms of MOU and issued notice to applicant thereby cancelling such MOU, was required to file a suit before this Court for specific performance of contract and on the strength of orders passed by this Court, he is stated to be in possession of said land.

4 It is further contended that in fact, on the report lodged by applicant since no action was taken by the police authorities of concerned police station, applicant has filed Writ Petition seeking directions to transfer investigation to some other police station. My attention is also invited to documents with regards to above submissions on record together with the copies of orderof this Court passed in Civil proceedings initiated by applicant under the name of his firm "M/s.Royal Agro Food Industries".

5 By referring to the report dated 20th May 2016 lodged by Dr.Priti Sethi, it is submitted that it refers to series of incidents involving applicant on 1/3/2016, 15/3/2016, 19/3/2016, 5/5/2016 and 6/5/2016. Inspite of that, report is lodged belatedly on 20/5/2016. According to applicant, all the contentions in the report are totally false filed by the informant in view of ongoing strained relations between complainant and the applicant.

6 In the light of facts as aforesaid, and mainly relying upon MOU, orders of this Court in Notice of Motion No.1669/2016 in Suit No.579 of 2016 dated 30/5/2016, 29/6/2016 and 30/7/2016, it is thus submitted that since according to the directions of this Court, applicant is in possession of suit property referred in the report on the basis of which present crime is registered, applicant be granted interim protection by allowing the application.

7 Learned APP has opposed the application contending that applicant is a history sheeter and criminal element as there are number of offences registered against him much prior to the present crime. It is also submitted that applicant has a typical *modus-operandi* of making part-payments in respect of immovable properties and on that basis to grab its possession, and thereafter not to pay the remaining amount.

8 Similar is the contention of learned counsel appearing for the complainant – intervenor as it is submitted and by referring to the compilation of documents having therein various orders passed by the Criminal Courts, convicting applicant as well as copies of documents establishing various proceedings initiated against the applicant by the Debt Recovery Tribunal, stated that application does not deserve any relief.

9 In the background of submissions, as aforesaid, on perusal of MOU which is stated to be in the handwriting of complainant, it is noted that by this document, it was agreed

between complainant and applicant on 28th October 2015 that the property situated at Bhoiwada, Bombay, as stated therein, was agreed to be sold to applicant along with its furniture, fixtures etc. for a consideration of Rs.40,51,00,000/- (Rupees Forty Crore Fifty one lakhs), and total sale consideration amount along with registration charges etc. was agreed to be completed within a period of 120 days from the date of entering into MOU.

10 Thus, it is the case of applicant that after entering into such MOU as complainant did not act upon terms therein, he has initiated suit for Specific Performance of such agreement. In the light of case of applicant, as aforesaid, from order of this Court passed in Notice of Motion referred above dated 30th May 2016, reveals that said proceedings are initiated by applicant's firm against complainant's corporation styled as M/s.Parekh Corporation", contending that prior to entering into MOU, plaintiff/applicant herein was put in possession of suit property, and in that event, conditional order is passed directing that "if the plaintiff is in possession of the suit property as claimed, then he shall not be dispossessed till the next date of hearing", which order was thereafter continued, and is still in force, as stated by learned counsel for both the sides.

11 In the background of above orders, learned counsel for the applicant has thus submitted that since applicant is in possession of suit property of which dispute arose, there is no reason for Custodial Interrogation, and the outcome of these proceedings would certainly be decided by this Court in civil proceedings.

12 Learned APP as well as learned counsel for the intervenor, however, had submitted that considering the criminal track of applicant, he is not entitled for any sort of relief as also stated earlier. In the light of their submissions, on perusal of MOU entered on 20th October 2015, learned APP had submitted that applicant might have been allowed to perform *puja* on the auspicious date of Dussehra which in that year, fell on 22nd October and merely because such *puja* is allowed to be performed, applicant cannot be said to be legally in possession of the property. Learned counsel for the Intervenor has also contended that this is the practice adopted by applicant to grab the property by making part-payment thereof and to raise dispute in respect of same in future without making further payments.

13 In the background of submissions as aforesaid, and on perusal of documents placed on record, it reveals from FIR that applicant by taking law in his hands, has illegally attempted to take possession of property at Bhoiwada on 1.3.2016 by arriving along with 18-20 of his associates and his security guards, and by opening the door, forcibly evicted complainant's security guards who were present on the spot. Upon complainant's Director informing this fact to police, on arrival of police from R.A. Kidwai Marg Police Station, three of applicant's associates were apprehended and taken to police station.

14 On 15/3/2016, again applicant with 35 – 40 associates entered into the property by jumping from its compound wall and assaulted persons who were present there,

including Director of complainant and removed them from the premises and caused damage to property. When again police were informed and on arrival of police, applicant along with his associates were apprehended and taken by police. Complainant thereafter, appointed as many as 24 new Security guards at his property.

15 Similar incident was again caused on 19/3/2016 by the applicant and his 11 associates. According to the FIR, one such incident dated 5.5.2016 further goes to establish when complainant was called to R.A. Kidwai Marg Police Station, along with Administrative Officer of complainant, he in the presence of police, extended threats that he would visit the spot along with 100 persons within 2 – 3 days to take possession thereof, of which complainant also met Commissioner of Police, and on the following day, at around 11.00 in the night, applicant along with team of his persons, including photographer, videographer, his Advocate in civil clothes, and around 20 others arrived on the spot having accompanied with them 8 – 10 police officials and security guards, and had ousted the security guards who were deputed by the complainant on the spot and forcefully obtained possession of the premises.

16 In the background of series of incidents as above, report came to be lodged and offence is registered against the applicant.

17 While considering applicant's entitlement for relief sought in this application, on perusal of order of this Court passed

in the proceedings initiated by State for cancellation of bail granted to applicant by the trial Court, this Court has in paragraph no.5 of its order dated 15/3/2016 has specifically observed that there are many offences registered against the applicant in various police stations and in the circumstances, has noted that it is not possible to overlook the fact that accused is indulged in similar offences repeatedly, and because of his antecedents, is not entitled for bail, and has thus cancelled bail granted to the applicants earlier, and thereby cancelled all the six bail orders which were granted in favour of applicant by various Courts.

18 Similarly, from further documents, it is found that recovery proceedings are initiated against applicant by various Banks by filing proceedings before Debt Recovery Tribunal, in various cases.

19 Above documents thus clearly establish that applicant is a criminal element involved in various types of cases, including cheating, forgery as well as in respect of cases under Section 138 of the Negotiable Instruments Act which are more than 10 – 15 in numbers pending before various Courts initiated by different complainants against the applicant.

20 In the background of criminal antecedents of applicant as aforesaid, reference is necessarily to be made to sub-section (2) of Sec.438 of Code of Criminal Procedure along with State Amendment which has been reproduced as below, as said aspect needs to be considered while considering application for grant of Anticipatory Bail. Section 438 (1)(ii) of Cr.P.C reads thus:

> [(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-
>
> > (i) …………….
> >
> > (ii) the antecedents of the applicant including the fact as to whether he has, on conviction by a court previously undergone imprisonment for a term in respect of any cognizable offence;

21 Having considering above statutory provisions, applicant is thus not found entitled to relief claimed.

22 Learned counsel for the intervenor, expressing that applicant has approached to this Court by suppressing material facts particularly with reference to various cases in which he is earlier involved and about his convictions and other various proceedings pending against him, has also relied upon the authority in the case of ***Dalip Singh Vs. State of Uttar Pradesh & ors reported in (2010) 2 Supreme Court Cases 114***, wherein paragraph no.7 of the judgment, referring to the observations in the case of Prestige Lights Vs. SBI, it is noted thus

> “that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a Court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution.”

22 Having considering facts as aforesaid, application is devoid of merits.

23 Same is therefore, dismissed.

(P.N. DESHMUKH, J)