Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.323 OF 2014

Vimal Champaklal Gandhi .Applicant

Vs.

The State of Maharashtra & anr. .Respondents

WITH
CRIMINAL APPLICATION NO.510 OF 2014
(For Intervention)
IN
CRIMINAL APPLICATION NO.323 OF 2014

Md. Rafique Md. Husain Tinwala .Intervenor

IN THE MATTER OF

Vimal Champaklal Gandhi .Applicant

Vs.

The State of Maharashtra & anr. .Respondents

Mr.A.H.H.Ponda i/b. Mr.B.A.Lawate, Advocate, for the Applicant
Mr.A.Sait, APP, for the Respondent No.1 – State
Mr.S.Shamim, Advocate, for the Respondent No.2

CORAM : REVATI MOHITE DERE, J.

DATE : 15.03.2016

P.C.

. Heard learned counsel for the Applicant, learned counsel for the Respondent No.2 and the learned APP for the Respondent No.3 – State.

2. At the outset, learned counsel for the Applicant seeks leave to amend to correct prayer clause (c). Leave granted. Amendment to be carried out forthwith.

3. By this Application, the Applicant seeks setting aside condition Nos.2 & 3, which were imposed vide order dated 30.06.2014, whilst granting anticipatory bail to the Applicant.

4. The said condition Nos.2 & 3 which are sought to be set aside read thus :-

> "2. Applicant is directed to deposit an amount of Rs.5 lacs within two weeks from today with the Registrar(Sessions).

> 3. The amount so deposited be invested in the fixed deposit initially for three years. The amount so deposited shall be paid to the person entitled to receive the said amount on determination of the trial in respect of FIR no.159 of 2013 as per order of trial court."

5. Learned counsel for the Applicant submits that once the learned Judge had observed that the transaction was essentially between Shirish Shah and the Complainant; that there was a delay of two months in lodging the FIR and that there was no explanation for the same; that there was some substance in the statement of the Applicant that after the failure of the deal, the Complainant was pressurizing the Applicant to get the money, the said condition was uncalled for. He relied on para 11 of the order dated 30.06.2014 which reads thus :-

> "11. The earlier report lodged by the applicant shows that the transaction has failed in the month of May. As mentioned in the FIR last visit of the complainant

to the office of the applicant was on 20th May, 2013 and after few days thereof he realized that he is not going to get anything out of transaction. No explanation is given as to why FIR is lodged after about two months. The unexplained delay in lodging FIR discloses that there is some substance in the statement of the applicant that after failure of the deal the complainant started to pressurize him to get money and even insulted him. Nobody has prevented the complainant to lodge complaint immediately after the cheques tendered to him bounced. The conduct of the complainant, thus, discloses that there is some substance in the statement of the applicant that his role in the transaction between Shirish Shah and the complainant is that of a broker and he is not concerned with either fabrication of BG or with promise made to the complainant. Even if it is accepted that the applicant in collusion with Shirish Shah promised finance to the complainant. Actual transaction is in between Shirish Shah and the complainant, applicant, thus, was not required to fabricate documents or hide fabricated documents. Applicant accepts that he did prepare handwritten statement to explain the scheme to the complaint and he did give SMSs regarding development in the

> transaction. The statement of applicant is already recorded. As per the statement of co-accused the applicant has received an amount of Rs. 5 lacs from the transaction. Money received by him is from money deposited by complainant. Thus, considering the above discussed reasons, it will be appropriate to continue interim protection of the applicant by imposing conditions on him to deposit Rs. 5 lacs in the court."

6. He submitted that the condition directing the Applicant to deposit an amount of Rs.5 lacs was onerous in the facts & circumstances of the present case, in particular, considering the observations made by the learned Judge.

7. Learned APP opposes the Application. He submits that the condition imposed by the learned Judge was neither onerous nor unreasonable. He relied on the Judgment of the Apex Court in ***Sumit Mehta Vs. State of N.C.T. of Delhi***, reported in ***2013 AIR SCW 5947***. He submitted that such conditions in cases of cheating, electricity

pilferage & consumption could be imposed.

8. Learned counsel for the intervenor supported the submissions advanced by the learned APP.

9. Perused the Application, the order dated 30.06.2014 passed by the learned Additional Sessions Judge, Greater Bombay while enlarging the Applicant on anticipatory bail, in particular para 11 of the said order as well as the Judgment relied upon by the learned APP. In the facts, it appears that the condition of deposit is onerous and unreasonable.

10. Considering the aforesaid, the Application is allowed and the conditions which are set out in Clause Nos.(2) and (3) of the order dated 30.06.2014 are set aside.

11. In view of disposal of the Application, the Intervention Application does not survive and the same stands disposed of accordingly.

(REVATI MOHITE DERE, J.)