Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1470 OF 2015

1. Rajesh Kanojia
2. Sobhnath Turanthi Sharma ... Applicants

Vs.

1. The State of Maharashtra
2. Anthony Joseph Pattathu ... Respondents

Ms. Anjali Awasthi, Advocate for the applicants.
Mr. Rizwan Merchant i/b. Rizwan Merchant & Associates, Advocate for respondent no. 2.
Mrs. S.S. Kaushik, APP for the State.
Mr. Prakash Bagal, P.I., E.O.W., Mumbai.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **16th April, 2016.**

P.C.:

This Application is moved by the applicants/accused for pre-arrest bail, as they are prosecuted for the offences punishable under sections 420 r/w. 120 of the Indian Penal Code. The offence is registered at C.R. No. 270 of 2014 at Vakola Police Station at the instance of one Anthony Pathatu Joseph Pattatu, which was subsequently transferred to Economic Offences Wing, Mumbai Crime Branch bearing C.R. No. 63 of 2014

2. It is the case of the complainant that he is an architect and builder by profession. In March 1984 he came across applicant/accused no. 2 Sobhnath Sharma. He was owner of CTS No. 4950(B) and 4950(B1) at Kolekalyan, Andheri. The complainant showed interest in purchasing the said property from the father of applicant/accused no. 2. Thereafter the

Agreement of sale was entered into with Rizwanulla Choudhary for consideration of Rs.1,05,000/- and possession was handed over to him. It was agreed that after development of the property, the purchaser would provide one flat and two shops on the ground floor. Thereafter they also executed irrecoverable power of attorney dated 10th April, 1984 in favour of Rizwanulla Choudhary. Subsequently, by an Agreement of Sale dated 8th May, 1984, the complainant purchased the entire plot of land along with structure thereon from Rizwanulla Choudhary for a total consideration of Rs.2,30,000/- and Mr. Choudhary executed irrecoverable power of attorney in his favour. The complainant developed the said property and a building namely Mini Rose Apartment was constructed and one flat was alloted to the family of applicant/accused no. 2. So also, an amount of Rs.1 lakh was paid. On 27th April, 1984 BMC issued occupancy certificate to the complainant, however the land remained to be transferred in his name and so there was no conveyance of Mini Rose Apartments. Subsequently, the applicant/accused no. 2 sold flat no. 4 which was alloted to him to one Emy Mathai for Rs. 8,00,000/- on 31st January, 2005. In March 2014 the complainant had knowledge that the applicant/accused no. 1 who is an advocate by profession and applicant/accused no. 2 who is owner of CTS No. 4950B admeasuring 4480.6 sq. mtrs. along with structures thereon sold the entire property in favour of applicant no. 1 Rajesh Kanojia for a consideration of Rs. 3,00,000/- and name of applicant/accused no. 1 is incorporated on the property card. The Deed of Conveyance dated 6th March, 2009 was registered. It is the case of the complainant that both the applicants/accused, i.e., Rajesh Kanojia, Advocate and Shobnath Sharma, owner of the land, had prior knowledge that the property has been conveyed to the complainant, however, they took undue advantage and entered into registered sale deed of the same property which was already sold to the complainant. Thus, the building and land is fraudulently transferred and mutated in the name of Rajesh Kanojia. Pursuant to this complaint, the offence was registered.

3. The learned counsel for the applicant/accused has submitted that the applicant no. 1-Rajesh Kanojia is an Advocate and applicant no. 2 is a real owner of the land. She submitted that FIR is based on void agreements and it suffers from undue delay of several years. She submitted that Agreement of Sale which has taken place between Rizwanulla and complainant did not attain finality. This is not a registered sale deed. Accused no. 2 is a poor person and the complainant has created terror. She submitted that the learned Judge of the Sessions Court has erred in appreciating the case of the applicants/accused. She submitted that the observation of the learned Judge that true facts were not brought by the applicants on record while seeking interim protection and that at the relevant time no civil suit was pending is not entirely correct. On the basis

of erroneous finding, the learned Sessions Judge had arrived at a wrong conclusion. She submitted that the complaint filed by one Abraham Mathai, flat purchaser at Mini Rose Building, with Human Rights Commission against the applicant/accused no. 1 is dismissed by the order dated 1st July, 2015. Though the said order was in respect of other land, Mini Rose building is illegally constructed. The learned counsel submitted that the applicants/accused shall not jump the bail. They are ready to cooperate the police. She further submitted that two Civil suits are filed and is pending between the parties in respect of the property. She submitted that Abraham Mathai has also filed the complaint with BMC for demolition of residential premises of applicant no. 1. She prays that the applicant/accused be granted pre-arrest bail.

4. Learned APP and learned counsel for the complainant have opposed this Anticipatory Bail Application. The learned counsel submitted that this case is in respect of land bearing CTS No. 4950B situated at Kolekalyan. This is earlier conveyed to complainant by applicant no. 2. Thereafter, fraudulently the said property was mutated in the name of applicant no. 1-Rajesh Kanojia and they both have committed an offence punishable under section 420 r/w. 120 of the Indian Penal Code. The learned counsel submitted that at the time of praying interim pre-arrest bail before the Sessions Court, the applicants misguided the Sessions Court by making a

false statement that the Civil Suit is pending between the parties. However, no civil proceeding was pending at the relevant time. The learned counsel Mr. Merchant submitted that if the order is obtained by playing fraud on the Court, such order is nullity, therefore, the learned Sessions Judge has finally rejected the Anticipatory Bail Application. In support of his submissions, he relied on the ruling of **Moti Lal Songara vs. Prem Prakash alia Pappu & Another, reported in (2013) 9 SCC 199**. He further submitted that applicant no. 2 has been given a flat in the building which is constructed by the complainant and though he is staying there, he wrote false complaint to the Corporation in respect of demolition of the said building. It is a fraud played by applicant no. 2. Though applicant no. 1, who is advocate, is fully aware of the situation, he has entered into registered sale deed of the land. Hence the applicants are not to be given pre-arrest bail.

5. Heard both the parties. Perused the documents and the agreements entered into by the respective parties. *Prima facie* it shows that applicant no. 1, who is lawyer, has entered into an registered agreement of sale with the land owner, i.e., applicant no. 2, though he was fully aware that there is an agreement of sale and the building is already constructed by the complainant. The learned Sessions Judge has given interim pre-arrest bail relying that Civil case is pending between the parties. However, at the

relevant time, no such civil case was filed. Subsequently, the civil suit was filed and as on today it is pending between the parties. It is a civil dispute in respect of proprietary rights of the complainant and land owner and now the applicant no. 1/Advocate has stepped as a party in the said dispute. A proper remedy for the parties to seek orders from the Civil Court.

6. In the case of **Moti Lal Songara** *(supra)* the order passed by the Revisional Court setting aside the order taking cognizance was not challenged and the very basis of the continuance of the proceeding had become extinct. The ratio laid down in this case is binding on this Court. However, in the present case, this Court has considered the basic allegations against the applicants/accused and is not passing any order on the basis of any fact suppressed by the applicants/accused. Considering the nature of the dispute and the allegations made in the FIR, pre-arrest bail is granted to the applicants/accused on the following terms and conditions:

O R D E R

(i) Application is allowed.

(ii) In the event of arrest, the applicants/accused be enlarged on bail on furnishing P.R. Bond in a sum of Rs.30,000/- each with one or two sureties in the like amount;

(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 Tuesday between 6 p.m. to 8 p.m. for one month or till filing of the charge sheet, whichever is earlier;

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

(vii) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of anticipatory bail.

7. The Application for anticipatory bail stands disposed of on above terms.

(MRIDULA BHATKAR, J.)