

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2067 OF 2016

Vijay Jawahir Gupta	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. D.D.Rananaware, Advocate for the applicant.
Ms. Snehal Khairnar for orig. complainant.
Mr. S.H. Yadav, APP, for the State.
Mr. Gajanan Ghadge, API, Khandeshwar Police Station, New Mumbai.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 30th November, 2016.

P.C.

Heard. This is an application under Section 438 of Cr.P.C.
The applicant herein is apprehending his arrest in Crime No.181 of 2016 registered at Khandeshwar Police Station for the offences punishable under Sections 406, 417, 467, 471 read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that the complainant – Dr. Zarir Soli Screwvala approached the police station on 14.9.2016 and lodged a report alleging therein that on 18.12.1995, he had purchased a plot at Sector- I, Panvel. He was in exclusive possession of the said premises and

has also constructed a house on the said plot. It is specifically contended that the complainant is a resident of Mumbai and intermittently used to visit the plot at Panvel. In the year 2015, he came in contact with an estate agent – Rajesh Randhire. Through Rajesh, he had met the present applicant who had expressed his willingness to purchase the said plot. There were negotiations and thereafter memorandum of understanding (MOU) was executed between the complainant and the present applicant and it was agreed between both the parties that the consideration for the said plot would be Rs.65 lakhs. At the time of signing the MOU, the applicant had paid a token consideration of Rs.2 lakhs. It was agreed between the parties that the rest of the amount of consideration to the tune of Rs.63 lakhs would be paid by 25.11.2015. The complainant has further alleged that despite several efforts the applicant did not meet the complainant for performing the rest of the terms of the agreement. The complainant had therefore given a notice to the applicant dated 26.11.2015 informing him that for non-performance of the terms of the agreement, the agreement stands terminated. It is further alleged that after a lapse of time, the complainant had approached the office of CIDCO in order to see as to whether he could use rest of the FSI of the said plot and at that time, the CIDCO authorities had informed him that a document in the nature of indemnity bond is under

consideration by which it is shown that the complainant desires to transfer the said property in the name of the applicant. According to the complainant, he was sure that he had not executed any such document and, therefore, on 3.8.2016, he had filed an application to the CIDCO authorities to give him the documents on the basis of which transfer in the name of the present applicant was under consideration. That on 3.12.2015, he had received the indemnity bond duly signed by the complainant and his wife. It appears that the said document was executed before a Notary i.e. Advocate Sharada Pinjari. The complainant was sure that he had never visited the office of Advocate Sharada Pinjari and, therefore, presumed that the present applicant in connivance with Sharada Pinjari had got the said document fabricated and had filed it before the CIDCO authorities. On the basis of the said report, Crime No.181 of 2016 is registered at Khandeshwar Police Station.

3. The learned counsel for the applicant vehemently submits that as on today, there is no material on record to even remotely indicate that the present applicant had got the said document executed in the office of Advocate Sharada Pinjari. According to the learned counsel, the property is worth more than Rs.2 crores. It was agreed between the parties that the

applicant would purchase the said property for a meagre amount of Rs.65 lakhs on a condition that he would pay rest of the taxes and other encumbrances to the CIDCO authorities. According to the learned counsel for the applicant, in all probabilities, the complainant has got a better offer and, therefore, has implicated the present applicant in the present case or that he is being falsely implicated in the present case only because the complainant does not wish to stand by the memorandum of understanding.

4. The learned counsel for the applicant also submits that the offence under Section 420 of the IPC is not attracted as there was no inducement to the complainant to transfer the said document. This submission cannot be taken into consideration for the simple reason that it is not the case of the complainant that he has been cheated by way of inducement to execute the said document. It is submitted that the indemnity bond is not a valuable document. The Court has already considered this submission when it is observed that CIDCO authorities can place implicit reliance upon the said document for the purpose of transferring the title in the name of the present applicant.

5. Perused the papers. It is clear that the indemnity bond was purportedly executed on 26.11.2015 in the office of Advocate Sharada

Pinjari. It is purportedly signed by the complainant and his wife. There is no witness to the said agreement. The Notary Register, which is shown on the said indemnity bond, is at Sr. No.4082 dated 2.12.2015. However, the date on which the said indemnity bond is executed is 1.12.2015. In fact, it is the common practice that when a document is notarized before a registered Notary, the signatures are obtained on the register on the same day when the document is notarized. It is further pertinent to note that ever since the date of registration of offence, the whereabouts of the Advocate-Notary Sharada Pinjari are not known. Her Anticipatory Bail Application was rejected by the Sessions Court. The contents of the Indemnity Bond reads as follows :-

“Whereas I am desirous to transfer the said premises in favour of the intending transferee – Vijay Jawahar Gupta (hereinafter for the sake of brevity referred to as the said purchaser).”

6. It is pertinent to note that the notice in respect of the termination of MOU is dated 26.11.2015 and within 4 days the indemnity bond is executed before a Notary. According to the learned counsel, in the absence of any material to show that the applicant had even visited the office of the Notary or as to whether the forged signatures of the complainant and his wife th custodial interrogation would not be imperative.

7. The learned APP rightly submits that the said document is fabricated by the applicant and the Notary Public. The learned APP submits that it would be necessary to draw the said presumption mainly because the only beneficiary of the said document would be none other than the present applicant. Since it amounts to fabrication of a public document upon which the CIDCO authorities can rely or place implicit reliance for the purpose of transferring the title to the property, it can be safely said that the present applicant in connivance with the Notary in all probabilities, has got the said document fabricated

8. For all the reasons stated hereinabove, the application seeking pre-arrest bail stands rejected.

(SMT. SADHANA S.JADHAV, J.)