IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. ANTICIPATORY BAIL APPLICATION NO. 10 OF 2017

Umesh Keshav Motwani .. Applicant
Vs.
The State of Maharashtra .. Respondent

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Mr.A.P. Mundargi, Senior Advocate a/w. Mr.Nitin Sejpal, Advocate for the Applicant.
Mr.M.G. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 14, 2017.

P.C. :

The applicant is apprehending arrest in connection with C.R.No.I-1 of 2017 registered with Hill Line Police Station, Ulhasnagar, District – Thane for the offences punishable under Sections 306 and 506 read with Section 34 of the IPC.

2 FIR was registered at the instance of the wife of the deceased. It is the prosecution case that the husband of the complainant had decided to purchase a house in the year 2012 with the intervention of one Parmanand Hiranand Tejuja. It was decided to purchase the flat belonging to Hareshlal Rohra where

the complainant and her husband were residing for a consideration of Rs.29,65,000/-. It was agreed that the agreement was to be executed for consideration of Rs.26,65,000/- and balance Rs.3,00,000/- to be paid subsequently. The deal was transacted in the presence of Parmanand, Umesh Motwani (applicant) and the brother of in law of Hareshlal Rohra namely Nandlal. The husband of the complainant parted with a token amount of Rs.2,50,000/- to the owner of the premises and it was agreed that the balance consideration would be paid from time to time. In view of that, the subsequent payment was made on 16th March, 2012, 30th April, 2012, 21st May, 2012 and 2nd June, 2012. The complainant's husband had made a payment of about 26,65,000/-. Thereafter, the request was made to the owner of the premises to accept the balance consideration of Rs.3,00,000/-, on registration of document the premises be transferred in the name of the deceased. From time to time, the complainant's husband approached the owner along with Mediators. The complainant's husband also handed over the amount of Rs.1,53,900/- towards the stamp duty and also the amount of Rs.25,640/- towards registration charges. However, Mr.Rohra avoided registration. On 13th December, 2014, the complainant and her husband had approached Mr.Hareshlal Rohra at his residence and at that time the applicant accused was also present. At that time, he informed that the flat was taken by them by executing agreement with one Pralhad Kakade. However, the stamp duty and registration was not done. They also promised that requisite formalities will be done through builder Pralhad Kakade. Thereafter, all of them went to the builder. They were informed by Mr.Kakade that, he had executed agreement with Mr.Rohra and hence registration will have to be done by him. They again approached Mr.Rohra who again promised that he will do the needful. It is further alleged that the daughter of the complainant was ill and she was suffering from serious aliment. She was undergoing treatment in Hinduja Hospital, Mumbai. The complainant's family was in dire need of money. They were planning to complete the formalities of purchase of flat and than sell it to some person and arrange money for treatment of daughter. They borrowed money from people for treatment. The complainant's husband then filed a complaint with the Consumer Forum. It is alleged that the applicant was pressuring the complainant's husband to withdraw the said complaint. It is further alleged that from time to time the complainant's husband was being threatened and was being pressurized by the accused persons. The daughter of complainant expired on 19th May, 2016. The deceased was mentally disturbed due to the fact that for want of money, better treatment could not be given to his daughter. The accused threatened the deceased and he was living under fear. The accused forwarded evidence of affidavit to the deceased by post and, hence, the deceased thought that he will have to loose the flat.

3 On account of the said harassment, the complainant's husband committed suicide on 30th December, 2016. Hence, FIR came to be registered to the said police station.

4 Mr.Mundargi, learned Senior Advocate appearing for the applicant submitted that he has been falsely implicated in the crime. It is submitted that the premises, viz. Flat No.302 was purchased by applicant unregistered agreement dated 17th March, 2011 entered into with the builder/seller Pralhad Kakade. The possession was handed over to applicant. By unregistered agreement, the applicant sold the said flat to Mr.Haresh Rohra. The possession was handed over to Mr.Rohra. The applicant received a notice dated 10th November, 2015 issued by advocate Tolaram on behalf of Mr.Parsram Santwani and Mrs.Neha Santwani. It was alleged in the notice that the applicant and Mr.Rohra had jointly sold the flat to them and that the applicant

is not cooperating for registration and remanding balance amount. It is submitted that the applicant had no information that Mr.Rohra had sold flat to them. The applicant, thereafter, learnt that agreement for sale was executed on 12th January, 2012 between Mr.Rohra and aforesaid persons. The applicant was not party to the said agreement. Mr.Rohra stated that he would reply the notice and applicant may join to avoid burden of paying fees of advocate. Reply dated 30th November, 2015 was sent wherein it was clarified that the applicant is not concerned with transaction. It is further submitted that the applicant received summons from District Consumer Forum in relation to complaint by Mr.Santwani against applicant, Mr.Rohra and Mr.Tenuja. The complaint was seeking relief against Mr.Rohra. It is submitted that the complainant has made reference to the affidavit in the form of examination in chief received by her husband through advocate of Mr.Rohra and by going through the same, her husband came to conclusion that he would loose the flat and went into depression. It is submitted that on perusal of the said affidavit, it can be seen that applicant has nothing to do with transaction between Mr. ohra and deceased. There is no privity of contract between the deceased and Mr.Rohra and the applicant. The applicant has been unnecessarily dragged into the controversy. He relied upon several documents which are annexed to the application. It was also submitted that by no stretch of imagination, offence under section 306 of the IPC is made out against the applicant. There is no semblance of any evidence to show that there was an abetment on the part of the applicant–accused to the deceased to commit suicide. It is submitted that apparently the deceased was under frustration on account of the illness of his daughter who was suffering from cancer. It is in these circumstances, it appears that the deceased had committed suicide and the complainant is now blaming the applicant.

5 Learned APP submitted that the applicant is involved in the serious crime. He was constantly harassing the deceased person which amounts to abetment to commit suicide. He also pointed out that the deceased had executed a suicide note, wherein he has referred to the harassment caused to him by the accused persons. He also submitted that during the pendency of this application, complainant was threatened and the N.C. complaint has been registered in the police station.

6 He, therefore, submitted that custodial interrogation

of the applicant is necessary and the application should be rejected.

7 Mr.Mundargi, learned Senior Advocate submitted that taking into the averments in suicide note, it cannot be said that the accused had abetted the deceased to commit suicide. He further submitted that the allegations made in the FIR that the deceased was continuously harassed are not reflected in the suicide note, although, there is a reference of subject transaction. He further submitted that a NC complaint was lodged against the unknown person.

8 I have perused the documents on record and the investigation papers produced by the learned APP. It appears there was a transaction of purchase of premises by deceased with Mr.Rohra. In the FIR, it is mentioned that the applicant was acting as a Mediator. The acts attributed to the applicant in the FIR are not reflected in the suicide note. There should be positive act on the part of accused to instigate or aid in committing suicide. In the light of the aforesaid circumstances, I do not think that the case is made out for grant of custodial interrogation of the applicant. The applicant was granted interim protection on 5th

January, 2017 and, he was directed to report the concerned police station as and when called by the investigating agency and to co-operate with the investigating agency to the best of his capacity. Learned counsel for the applicant submits that he had reported to the police when he was called upon to do so and he was handed over the documents and has co-operated with the investigation. Learned APP on instructions, however, submitted that on the last occasion, the applicant has reported once, thereafter, he had not reported to the police station. However, nothing was brought on record to show that the applicant was summoned by the police for the purposes of investigation or to attend the police station.

9 Hence, I pass the following order:

:: ORDER ::

(i) Criminal Anticipatory Bail Application No. 10 of 2017 is allowed;

(ii) Interim order dated 10th February, 2017, passed by the Additional Session Judge, Kalyan, is confirmed;

(iii) The applicant is directed to report Hill Line Police Station, Ulhasnagar, District Thane, once in a week on every Friday between 11.00 a.m. to 1.00 p.m., till the filing of the charge-sheet. Thereafter, the applicant shall report the said police station once in a month on first Friday between 11.00 a.m. to 1.00 p.m.

(iv) It is clarified that the observations made in this order are only for considering the application for anticipatory bail and the trial Court shall not be influenced by the same;

(v) Criminal Anticipatory Bail Application is disposed of.

(**PRAKASH D. NAIK, J.)**