IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.410 OF 2017
WITH
BAIL APPLICATION NO.1777 OF 2016
WITH
CRIMINAL APPLICATION NO.461 OF 2017

Jayesh Mansukhlal Parekh .. Applicant
Vs.
The State of Maharashtra .. Respondent

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Mr.Mihir Gheewala i/b.Mr.S.G. Pawar, Advocate for the Applicant.

Mrs.Veera Shinde, APP for the Respondent – State.

Mr.Yusuf Iqubal Yusuf N. Majra Firoz Qureshi i/b. Y & A Legal, Advocate for the Intervener.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 16 , 2017.

P.C. :

The applicant had preferred these applications for bail in connection with two cases registered against the applicant. The Bail Application No.410 of 2017 pertains to CR No.92 of 2016 registered with Matunga Police Station for The offences punishable under Sections 465, 467, 468, 406, 420 of IPC. Whereas, the Bail Application No.1777 of 2016 is in relation to C.R.No.107 of 2016 registered with Matunga Police Station for offences punishable under Sections 465, 467, 468, 471, 406, 420 of IPC. The first information report in relation to C.R.No.92 of 2016 was lodged by Shri Tarun Shah on 22nd March, 2016. While the First Information Report in C.R.No.107 of 2016 was lodged at the instance of Smt.Sheetal Yogesh Thadeshwar on 7th of April, 2016.

2 The prosecution case in relation to C.R.No.92 of 2016 is that the applicant had executed development agreement with the informant who is a developer in respect of the property bearing Plot No.74 situated at R.A. Kidwai Raod, King's Circle, Matunga (East), Mumbai which is admeasuring about 761.71 sq. meters. The said agreement was executed on 23rd July, 2013 and the applicant accused had accepted an amount of Rs.11,00,000/- from the informant through cheque. It was agreed that the applicant will receive 800 sq. ft. area plus 1600 sq. feet flat, as a consideration. Accordingly, the applicant executed irrevocable power of attorney. In the meantime, the informant learnt that the applicant had also executed the agreement with other developers. After inquiry it was learnt that the applicant has executed agreement for development with Muljibhai, the owner of Vasant Developers, one Pravin Togani the owner of Hirasan Gems and

accepted the amounts. It was also learnt that the applicant had executed leave and licence agreement with Sheetal Yogesh Thadeshwar with respect to Flat No.12 and accepted an amount of Rs.46,00,000/- from her. The property was registered as Siddhgiri Reality Pvt. Ltd.Oon 26th September, 2013, the applicant executed Memorandum of Understanding (MOU) and accepted an amount of Rs.1 crore. It was further learnt that the applicant and his family members were declared insolvent in the proceedings initiated before the High Court. The applicant also filed probate application in the High Court. It was also revealed that the applicant was declared insolvent. One civil suit also filed by the applicant.

3 The case in respect to C.R.No.107 of 2016 is that the first informant Sheetal Thadeshwar has lodged the FIR. It is alleged that the informant came to know the applicant in the year 2011 through one agent. The complainant and her husband were represented that flat no.12 situated at Krishna Kunj Building at RAK marg is in his name and the market price of the flat is Rs.46,00,000/- and he would be transferring the said flat in the name of the first informant. The first informant and her husband therefore started collecting money from selling ornaments and

from other sources. However, the applicant – accused refused to accept the cheque and told that the said flat is taken on pagadi system and, therefore, amount should be paid in cash. The first informant, therefore, made the payment to the applicant–accused and requested him to transfer the flat in her name. Accordingly, stamp papers were purchased and affidavit/indemnity bond was registered and the applicant told the first informant that he is the only owner of the said premises and his brother Rajesh Parekh has no right in respect of the said building and had given the declaration made by Rajesh Parekh before the Notary. It is further alleged that the applicant told the informant and her husband that the rent receipt cannot be prepared and it would be prepared after some day and also told that one women namely Kamlaben Hirji Shah is residing alone on leave and licence basis and she is aged about 80 years and after her daughter comes the possession will be handed over. It is further alleged that the leave and licence agreement was shown by the applicant and it was for the period of 36 months i.e. from 27th April, 2011 to 26th November, 2014. It is further alleged that after some days the husband of the informant had inquired about the flat and at that time the applicant told him that he had taken deposit of Rs.20,00,000/- from the women namely Kamlaben and some amount is to be returned to her and he asked to the husband of the informant to help him. However, the informant's husband could not part with the further amount to the applicant. The applicant however, did not part with the possession of the flat to the complainant inspite of accepting the consideration. The complainant thereafter came to know the aforesaid flat had been already sold to one Ajit Mohta by the applicant and that the said person is residing in the said flat. The first informant again made inquiry with the brother of the applicant and came to know that he has not signed any declaration as was represented by the applicant. The first informant made reference of tenancy agreement, declaration by Rajesh Parekh, leave and licence agreement between Kamlaben and Rajesh, tenancy agreement between Ajit Mohta and Jayesh Parekh (applicant) and produced the said documents. It was revealed that the applicant had produced a false tenancy register by forging the signature of Rajesh Parekh and that he is likely to misappropriate the amount given by the first informant and hence, lodged the FIR vide C.R .No.107 of 2016.

4 The learned advocate for the applicant advanced arguments in connection with B.A.No.410 of 2017. It is submitted

that the applicant has been in custody for a long period of time. The matter relates to documents. The investigation has been completed and the charge-sheet has been filed. Further custody of the applicant is not necessary. It is submitted that the dispute is of civil nature and there is no *iota* of evidence to establish the offences under the penal code. The offence of criminal breach of trust and cheating are not made out in the present case. It is submitted that to constitute an offence of cheating, there has to be dishonest intention right from the inception. It is the case of the applicant that the memorandum of understanding was entered and, thereafter, the said property was assigned to him by way of registered documents. It is the claim of the complainant that he is now owner of the said property. The grievance of the complainant is that the applicant had not vacated the flat in which he is residing and further he has handed over the possession of the entire building to him. It is submitted that this is purely a civil issue. It is submitted that the High Court has granted stay by order dated 28th August, 2016 in favour of the applicant and his family members and they could not be dispossessed from the said premises. The complainant had concocted the version and has lodged the first information report with the active help of Matunga police Station. It is submitted that the complainant in connivance with Matunga police station has falsely implicated the applicant. It is submitted that the fact that the applicant has entered into the agreements with different parties can at the most be an offence of cheating *qua* the complainants therein. The sole intention of the complainant is to dispossess the applicant from the said premises. The allegation of forgery which is made in the present FIR pertaining to an alleged declaration which is purportedly to have been made by the applicant's elder brother Rajesh Parekh who has subsequently claimed that the declaration form and the signature appearing on the same was forged. It is submitted that the said aspect is investigated in C.R.No.107 of 2016 and the purported documents has been seized and relied upon in the said charge-sheet. The statement of the applicant's brother has been recorded by the police and handwriting samples of his brother as well as the applicant has been taken by the police. The alleged forged document is the subject matter of the present C.R.No.92 of 2016 as well as C.R.No.107 of 2016. It is further submitted that the complainant has filed a private complaint before the Metropolitan Magistrate Court by invoking Section 156(3) of Criminal Procedure Code. The prayer for investigation was not granted by the Court and the complainant was directed to record his verification statement. The verification statement of the complainant was recorded on 16th October, 2015 and, thereafter, he did not take any steps in the matter. The complainant then proceeded to file the present complaint in connivance with the police. It is submitted that the applicant has spent several days in custody and the investigation in respect to C.R.Nos.92 of 2016, 107 of 2016 and 100 of 2016 were carried out by the same investigating officer. It is submitted that on careful perusal of MOU dated 17th December, 2013 and the Assignment Deed of September 2014, it can be seen that for a mere advance of Rs.11,00,000/- the entire development right of the property were handed over to the first informant. The terms and conditions were one sided in favour of the complainant and for handing over the entire building to him, the applicant was to receive in return only 800/1500 sq. ft. flat and all monies that would receive would to be returned to the first informant. Even, after the Assignment Deed of September 2014, the applicant did not receive any money from the first respondent. This shows the *malafies* of the complainant. It is submitted that the applicant is the owner of the property at Krishna Kunj, Matunga which consists of ground plus three structures having approximately 13 residential flats in the said building. The applicant had inherited the said property from his mother Nirupama Parekh who had executed a Will last testament dated 12th September, 1987 and bequeath the same to the applicant. The flat no.6 on the second floor in the said property was bequeath to the elder brother of the applicant namely Rajesh Parekh. The applicant's sister Smt.Darshana Mehta had been the executor of last Will and Testament of her mother filed Probate Petition before the High Court vide Testamentary Petition No.1923 of 2015. In 2012 , the applicant was approached by one Yogesh Thadeshwar. He claimed to be the real estate agent and represented to him about the redevelopment of the property. He introduced the applicant to Tarun Shah who is the first informant in the present case and Aakash Shah who were directors of Siddhgiri Developers Pvt. Ltd. some time in the middle of 2012. Tarun Shah and Aakash Shah had represented to the applicant that they would develop the said property, as the same was tenanted property and the applicant would not benefit from it. The applicant innocently executed the Memorandum of Understanding dated 17th December, 2012. The applicant had also filed FIR vide C.R.No.299 of 2015 under Section 341 read with Section 34 of IPC against unknown persons for preventing him from entering into his own premises. It is submitted that the applicant has filed suit No.717 of 2015 before the High Court against Siddhgiri Developers Pvt. Ltd. In the said suit it was prayed for cancellation of Deed of Assignment dated 16th September, 2015 and irrevocable Power of Attorney dated 16th September, 2014 as well as the other documents. The High Court had passed an interim order preventing the defendants therein from obstructing the plaintiff's use, occupation and possession of the flat. It is, therefore, submitted that the entire matter relates to the dispute in relation to the property which is of civil nature and the matter pertains to the documentary evidence. The applicant has been in custody for a long period of time and further detention of the applicant is not necessary. It is pointed out that the applicant had preferred Criminal Application No.461 of 2017 in Bail Application No.410 of 2017 and it was prayed that the applicant may be permitted to deposit an amount of Rs.11,00,000/- which is the subject amount of the present complaint before this Court. The Court passed an order on 30th May, 2017 permitting the applicant to deposit the bank draft for an amount of Rs.11,00,000/- with the Registry of this Court. The said amount has been deposited by the applicant in pursuant to the said order before this Court. It is, therefore, submitted that the applicant may be granted bail.

5 In connection with the Bail Application No.1777 of 2016 it was argued by the learned counsel for the applicant that the investigation stands completed and the police have filed the charge-sheet. The allegations under Section 465, 467, 468, 471, 420 and 406 of IPC are punishable at the most with the punishment of seven years. For offences of such nature there is no impediment in granting bail to the applicant. It is submitted that the entire case relates to the documents which have been recovered and seized by the prosecution and they are exhibited in the charge-sheet. It is submitted that nothing has been recovered from the applicant. It is further submitted that the dispute is purely of a civil nature and the complaint has been filed with ulterior motive to arm twist the applicant into agreeing to the demands of the complainant. The fact of civil dispute can be demonstrated from the documents on record. It is submitted that the applicant has a dispute with Siddhgiri Reality Pvt. Ltd. of which Tarun Shah and his son Aakash Shah are the directors over the rights to develop the subject property. It is submitted that the Krishna Kunj is the property of the applicant which consist of ground plus three storied building where majority of flats have been leased. The applicant had entered into MOU for redevelopment of the said property which is the subject matter of

C.R.No.92 of 2016. In the FIR in C.R.No.92 of 2016, it is stated that Tarun Shah was introduced to the applicant by Yogesh Thadeshwar, who is the husband of the complainant in the present FIR. Shri Yogesh Thadeshwar is one of the defendant in Suit No.717 of 2016 filed by the applicant in this Court. It is submitted that the investigation in respect to all the three FIR is overlapping and the same is been conducted by the same police station. It is submitted that the claim of the complainant that an amount of Rs.46,00,000/- was paid to the applicant is concocted and no such amount is being paid to the applicant. The police have recorded the statements of jwellers who had claimed to have purchased jwellery of the complainant and paid her the amount in cash. It is submitted that the entire case has been managed by the complainant in connivance with the investigation machinery. It is submitted that considering the fact that the applicant has remained in custody for a long period of time and that further custodial interrogation is out of question, the applicant may be released on bail.

6 The learned APP and the learned counsel for the intervener strongly opposed the applications for bail preferred by the applicant in both the cases. It is submitted that three crimes

were registered against the applicant vide C.R.Nos.92 of 2016, 100 of 2016 and 107 of 2016. The applicant had executed the Memorandum of Understanding dated 27th June, 2016 with complainant Tarun Jayantilal Shah and accepted Rs.1,00,000/- at that point of time. It is further submitted that prior to that the applicant had executed tenancy agreement on 18th October, 2010 with Sheetal Thadeshwar, who is the complainant in C.R.No.107 of 2016. However, the applicant had not handed over the possession to her and it came to the notice that one Kamlaben H. Shah is in occupation of the said flat which was agreed to be leased to Sheetal Thadeshwar. The agreement was for a period of 27th April, 2011 to 26th April, 2014. In addition to this, the applicant had also executed assignment agreement on 16th September, 2014 with Siddhgiri Developers. It is further submitted that the documents *prima facie* show that the applicant has accepted various amounts on different times from different persons. The applicant also filed Probate application in the High Court and that the applicant was declared insolvent. It is further submitted that the applicant was aware of the litigation and Court procedure. He had executed several documents for development and accepted huge amount. The act of the applicant clearly establishes *prima facie* intention to cheat. The brother of the applicant has also stated that he has not signed the bond which was represented by the applicant to the developers to show his title to the property. It is submitted that these allegations which are supported by the evidence on record *prima facie* establishes the offences committed by the applicant.

7 It is submitted that the complainant Sheetal had lodged the FIR vide C.R.No.107 of 2016. It is stated by the said complainant that she came to know the applicant in the year 2011 through one agent and that it was represented to her that the flat no.12 in Krishna Kunj building belongs to him and he is willing to sell the same at the market price for the consideration of Rs.46,00,000/-. It is further submitted that the complainant and her husband collected the money by selling ornaments and the amounts was parted to the applicant. The documents were also prepared by the parties. However, inspite of receipt of the amount, the property was not handed over to them. It was further learnt that the said flat was being sold to one Ajit Mohta by the applicant. Ajit Mohta had informed that one Kamlaben was not at all residing at the said flat premises as represented by the applicant. One Pravin Togani, Mulgi Bhimani, and Amit Doshi had also filed complaint against the applicant. It is further submitted

that the son of the first informant in C.R.No.92 of 2016 had received frequent threats. The applicant had prepared a false agreement with complainant Sheetal Thadeshwar. It is, therefore, submitted that considering the fraudulent acts committed by the applicant, the bail should not be granted to him.

8 I have perused the voluminous documents which are part of both these applications. I have considered the rival submissions advanced by both the parties. It is contended by the applicant that his opponents are in conspiracy to falsely implicate the applicant in the said crime and thereby have registered three cases with the same police station. The opponents are determined to register a false case against the applicant with a view to pressurize him to succumb to their demand. He alleges conspiracy against the builders, developers and also his own brother. It is pertinent to note that the documents which are alleged to be executed by the applicant *viz*. tenancy agreement, declaration of his brother, leave and licence agreement to be executed between Kamlaben in respect to flat no.12 etc. are the fabricated documents. It is the case of the prosecution that there is no such women Kamlaben and inspite of this the documents came to be executed by the applicant. As far as the amount of

Rs.46,00,000/- is concerned, the prosecution is relying upon the documents to show that the first informant Sheetal had sold various ornaments to the jeweller and the money is received by her from the said jwellers. The statements of the said jwellers were recorded. The first informant and her husband appears to have collected more than Rs.50,00,000/- by selling the ornaments. The said fact is supported by various receipts and the statements of the jwellers. It is also submitted that the said transactions were reflected in the Income Tax Return of the complainant and her husband. The documents alleged to be registered between the first informant and the accused are part of the charge sheet. The said documents indicate that the applicant–accused had executed several documents with the first informant and other persons. The applicant had simultaneously executed the documents with various persons and accepted huge amount in respect to the said property. The dispute cannot be said to be of civil nature. The *modus operandi* of the applicant in indulging into various transactions requires to be noted and in the circumstances the applicant is not entitled for bail. It is true that the applicant is in custody since the date of arrest, however, looking into the manner in which the acts were committed by the applicant, he is not entitled for grant of bail.

9 In view of the aforesaid circumstances, I am not inclined to release the applicant on bail. However considering the fact that applicant is senior citizen and has been in custody, trial can be expedited.

10 Hence, I pass the following order:

:: <u>O R D E R</u> ::

(i) Bail Application No.410 of 2017 and Bail Application No.1777 of 2016 are rejected;

(ii) The trial in respect to both the cases are expedited. The trial court is directed to complete the trial within nine months from the date of receipt of this order;

(iii) The criminal Application No.461 of 2017 in Bail Application No.410 of 2017 stands disposed of.

(PRAKASH D. NAIK, J.)