IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 403 OF 2017

Deepak Vithal Rao. ... Applicant.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. A.H.H. Ponda i/b. Mr. Prakash Vare, advocate for Applicant.

Mr. P.R. Dave, advocate for original complainant.

Ms. P.P. Shinde, APP for State.

Mr. B.M. Belnekar, PI, Santacruz Police Station.

CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 15, 2017

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in M.E.C.R. No. 17 of 2016 registered at Santacruz Police Station on

21st October, 2016 for offence punishable under section 120B, 420 of the Indian Penal Code.

3 It is the case of the prosecution that Mr. Mahesh Doshi had filed a complaint in the Court of Learned Metropolitan Magistrate, 71st Court, Bandra on 3rd May, 2016 against the present applicant and two others, alleging therein that there was an agreement between the applicant and the complainant to the extent that the complainant would develop property situated at Mahim Causeway road, Mahim West Division admeasuring 4374.16 sq.mt..

4 The applicant happens to be the title holder of the said property. According to the complainant, the applicant was unable to construct building on the said land and therefore, he was in search of a developer, who could invest in the said project and the applicant had obtained permission and sanction from Slum Rehabilitation Authority and MCGM for demolition of the existing structure and construction of 3 building on the said land. It is alleged that the

applicant had represented to the complainant that the total cost would be Rs. 11 Crores. The complainant had agreed to develop the said property and arrange for funds. According to the complainant, he had issued a cheque of Rs. One Crore on 22/12/2010 in favour of M/s. Accanoor Associates Associates i.e. applicant's company. The cheque was encashed by the applicant. That on 21/1/2011 the complainant had issued another cheque of Rs. 1 Crore 75 Lakhs. That on 11/2/2011 a public notice was issued calling for objections if any as to whether there was any third party notice in the said property and on 16/2/2011, it was learnt that the applicant had created third party interest in the past with five companies. That the applicant was confronted. However, complainant had continued with the deal. It is further alleged that in March, 2011, the complainant had given Rs. 25 Lakhs in favour of the applicant by cheque. It is further alleged that the complainant had persuaded the applicant to implement the agreement. It is alleged that the applicant had diverted the funds to his project in Dubai. According to the complainant, he was cheated by the applicant to the tune of Rs. 3 Crores.

5 Learned Magistrate by an order dated 2/6/2016 had issued direction under section 156(3) of the Code of Criminal Procedure, 1973. The offence was registered against the applicant under section 420, 120B of the Indian Penal Code.

6 The learned Counsel for the applicant has vehemently submitted that on 21/10/2016 i.e. after registration of the offence, the applicant was called to the police station and his statement was recorded by the police. The applicant has given the details of the transactions between the complainant and the applicant. That it was specifically stated by the applicant that the complainant had decided to withdraw from the Term sheet agreement and had asked the applicant to return the money. He agreed to return the amount of Rs. 3 Crores. That he has returned Rs. 1 Crore 30 Lakhs by issuing cheques dated 6/11/2012, 29/12/2012 and 25/02/2012. On 10/9/2013 applicant had transferred Rs. 20 Lakhs by RTGS and on 29/5/2014 he had returned Rs. 50 Lakhs by RTGS. That the

applicant has specifically stated before the police that he has no intention to cheat the complainant and since the complainant has chosen to withdraw the project, he was returning the said amount. The applicant was made to submit to the police that he would pay Rs. 3 Crores 75 Lakhs to the complainant by cheques. In fact, the cheques dated 31/12/2016, 31/2/2017 and 28/2/2017 were in fact obtained from the applicant. He was made to give undertaking in the eventuality the cheques would be dishonoured, the complainant would be at liberty to recover the said amount.

7 The learned Counsel for the applicant submits that the said statement was recorded under coercion and that it is evident from the fact that the said statement was signed by PI, Santacruz Police Station. Needless to say that the statement was recorded in the police station.

8 The learned Counsel for the original complainant submits that the applicant has not abided by the undertaking given before the

police on 27/10/2016 and that since 27/10/2016 no application is made to the police that the said statement was recorded under coercion. Learned Counsel for the intervenor submits that in fact, the applicant has sent an email to the complainant that there was a joint meeting held at the office of the applicant on 25/10/2016, wherein they had arrived at an amicable settlement to resolve the issues and that he had issued cheques to the tune of Rs. 3 Crore 75 Lakhs as stated in letter dated 25/10/2016 and the same was confirmed. That the applicant had requested the complainant to inform Santacruz Police Station about the said amicable settlement.

9 It is pertinent to note that the email is sent on 28/10/2016 at 9.32 p.m. and the statement of the applicant was recorded in the police station on 27th October, 2016 and the same has been signed in the presence of the PI, Santacruz Police Station. The said statement was signed by P.I. Bhushan Belnekar. In these circumstances, it was not necessary for the applicant to request the complainant to inform the police about the amicable settlement between the parties.

10 Be that as it may, the learned Counsel for the applicant submits that there is suppression of facts by the complainant to the extent that it is not stated in the complaint that he has received an amount of Rs. 1 Crore 30 Lakhs prior to filing of the complaint. Even after registration of offence, when the statement was recorded, it is not brought to the notice of the police that he has received an amount of Rs. 1 Crore 30 Lakhs prior to the registration of offence. It is submitted that only to see that the matter is taken outside the purview of civil dispute, the said fact is suppressed by the complainant. It is also submitted that the present case is a classic example of the fact that police is acting as recovery agent in cases of civil dispute.

11 On the last date, the learned Counsel for the applicant had made statement before this Court that in order to show his bonafide, he is willing to pay the rest of the amount, which he owes to the complainant i.e. an amount of Rs. 1 Crore 70 Lakhs. The learned

Counsel appearing for the complainant was directed to take instructions as to whether the complainant is ready and willing to accept the offer. Today, the complainant is present in the court. Learned Counsel appearing for the complainant on instructions submits that the complainant is not willing to accept the offer.

12 In the facts of the case, custodial interrogation of the applicant would not be imperative and hence, this Court is of the opinion that the applicant deserves to be granted pre-arrest bail.

13 The observations are prima facie and restricted to the application under section 438 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration while deciding application for quashing of FIR or discharge or at the time of trial.

14 Hence, following order is passed:

ORDER

(i) The application is allowed

(ii) In the even of arrest in MECR No. 17/2016 registered at Santacruz Police Station, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. One Lakh and one or more solvent sureties in the like amount.

(iii) The applicant shall report to the police station and and when called after issuing notice under section 160 of the code of Criminal Procedure, 1973.

(iv) The applicant shall not tamper with the evidence.

15 The application stands disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)