IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.425/2017

Prakash Narayan Gagare .. Applicant
vs
1.State of Maharashtra
2.Sr.Inspector of Police,
Marine Drive police station,Mumbai.. Respondent

Mr.A.P.Mundargi Sr.Advocate a/w Mr.Rajaram
Mohan Roy for Applicant
Mrs.Veena Shinde APP for State

CORAM : PRAKASH D.NAIK, J.
DATE : 8 JUNE 2017

P.C.

1. This is an Application for anticipatory bail in connection with C.R.No.331 of 2016 registered with Marine Drive police station for offence under section 420 IPC.

2. The case of the prosecution is that the applicant-accused is serving in Mantralaya. The complainant and one Manda Hole had started a partnership business in the year 2013 viz Om Sai Industries. They were in need of Rs.1,29crores. They enquired with one Raju Gondwal and Sachin Mhaske who told them that the applicant would help in getting loan from Mantralaya and in June 2013 the applicant

was introduced to them. It was noticed that the applicant is the Personal Assistant of Rajendra Mule, the State Minister. Applicant represented that without mortgaging any property and only on the basis of rent receipts and quotation of machinery, loan can be sanctioned. The applicant represented that for the aforesaid arrangement Rs.5,00,000/- will have to be paid in advance and Rs.25,00,000/- to be paid subsequently. Accordingly, on 22.9.2012 an amount of Rs. 5 lakhs was paid to applicant. However, the partnership between informant and Smt Hole was dissolved. This fact was informed to the applicant. He promised to return the said amount. He refunded amount of Rs.3,70,000/-. Thereafter in December 2014, the complainant started new project on the advise of the applicant. The new project viz Sai Industries required finance of Rs.1.5 crores. On 23.1.2015 the complainant and Raju met applicant in the premises of Mantralaya,. At that time, the applicant informed them that they will have to pay Rs.30,00,000/- for sanction of loan. On 23.3.2015 the complainant and Vishal met applicant near Manora Building, Amdar Niwas. The applicant told them to meet near NCPA. At 6.00 p.m. applicant had a talk with informant in the car and accepted the amount of Rs.30,00,000/-. Thereafter from time to time, the informant informed that the process of loan is in progress. However, the applicant did not fulfill his promise. On 10.7.2015 writing was executed before Notary between applicant and complainant wherein it was stated that applicant has accepted the amount of Rs.30,00,000/-. The said document is signed by applicant. On 15.7.2015 the complainant received a call from Azad Maidan police station that the applicant had lodged complaint against her that signatures of applicant were obtained on blank papers under coercion. On confronting the applicant he denied about such complaint being made by him. The applicant did not return the amount and on demand threatened the complainant that he will file a complaint against her.

3. Mr.Mundargi learned Senior Advocate representing the applicant submitted that the applicant has been falsely implicated in the crime. He submitted that the applicant has not received any amount and that he had not executed any writing as alleged by the prosecution. He further submitted that the signatures appearing on the said writing are forged and the complainant is relying upon fabricated documents to implicate the applicant. He further submitted that the applicant had filed a complaint with police that his signatures were obtained by the complainant and others on blank papers under coercion. The applicant thereafter filed a complaint before the Court seeking investigation under section 156 (3) of the Criminal Procedure Code, 1973 and the concerned Court had directed the police to investigate the same. He

submitted that in the complaint it was contended by the applicant that the documents relied upon by the complainant are forged and fabricated documents. It is further submitted that the applicant has also filed a Suit on 28.7.2015 challenging the agreement dated 10.7.2015. He further submitted that he has been falsely implicated in the crime which is clear from the fact that on 22.9.2013 and 27.3.2015, there was no reason for the applicant to be present at the alleged scene of the offence. He relied upon the documents by filing additional compilation wherein it was stated that on 22.9.2013 he had travelled by Jet Airways to Aurangabad and had returned late in the night by train. As per the travel ticket the departure time was 6.15 a.m. from Mumbai and arrival at Aurangabad at 7.10 a.m. He relied upon railway ticket of Devgiri Express to show that on 22.9.2013 he travelled from Aurangabad to Mumbai in the evening. It was submitted that the applicant could not have remained present at the alleged time on 22.9.2013. He further placed reliance on service certificate issued by Vidhan Bhavan on 30.1.2017 to show that on 27.3.2015 as per recording in Biometric system from 9.16 a.m. till 8.30 p.m. he was busy in Assembly work and thus the allegation that he met the complainant on 27.3.2015 is false. He further submitted that the complaint filed by him is under investigation.

4. Mrs.Shinde learned APP vehemently opposed the application for anticipatory bail. She submitted that there is ample evidence collected during the course of investigation which shows complicity of the applicant in the said crime. She further submitted that the investigating authorities have recorded the statement of the Notary who has fortified that the subject documents is being executed on 10.7.2015 by the parties to the document. She further submitted that the complaint filed by the applicant was investigated by the police and it was found that there is no substance in the said complaint and the police have submitted 'B' Summary Report before the Court. She further submitted that the documents relied upon by the applicant in the form of Air tickets and railway tickets cannot be relied upon at this stage. The ground of alibi can be agitated during the trial. She submitted that evidence of witnesses is contrary to the version of the applicant and therefore, the involvement of the applicant is clearly established during the course of investigation. She therefore, submitted that the applicant has committed a serious offence. She further submitted that the applicant had accepted total amount of Rs.35 lacs on two occasions from the complainant with a promise that loan will be provided to her. However, the applicant did not fulfill the said promise. She submitted that the applicant misused his position and had induced the complainant to part with a huge amount. She further submitted that

cash amount was deposited in the account of the complainant as refund by the applicant. It was further submitted that the said amount was deposited at the instance of the applicant. She relied upon the receipt of deposit of some amount into account of complainant.

5. The last submission advanced by learned APP with regards to deposit may not be sufficient to infer that the applicant has deposited the said amount as the amount was not transferred from the account of applicant. However, there is sufficient evidence against the applicant to reject this application. The other submissions advanced by the learned APP are well founded. The statements of witnesses show involvement of applicant. It is difficult to accept that signatures of applicant were forcefully obtained on the blank documents. The statement of Notary confirms that the applicant had visited him to execute the document. The defence of the applicant in the form of alibi cannot be accepted at this stage. The complaint filed by applicant is investigated and 'B' Summary report has been submitted to Court.

6. Taking into consideration the investigation carried out by the police and evidence collected against the applicant during the course of investigation and the nature of the crime committed by the applicant, I am not inclined to allow this Application for anticipatory

bail. The application is therefore, required to be rejected.

7. Hence, I pass the following order :

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

(i) Anticipatory Bail Application No.425 of 2017 is rejected.

(ii) At this stage the learned Advocate for applicant submitted that the interim protection granted by this Court may be continued for a period of four weeks as the applicant intends to approach the Apex Court for seeking appropriate reliefs. Considering the request, the interim protection granted on 9.3.3017 is extended for a period of four weeks.

(iii) Application stands disposed of.

(PRAKASH D.NAIK, J)