IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.894 OF 2016

Akbar Mohammed Ali Kazi & Ors. ... Applicants

Vs.

The State of Maharashtra & anr. … Respondents

Mr.U.P. Warunjikar i/b B.U. Deshmukh for the Applicants
Mrs.Rutuja Ambekar, APP, for Respondent – State
Mr.Prashant Nikam, Respondent No.2/Complainant – present

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 1, 2017

P.C. :

1. This is an Anticipatory Bail Application, which is remanded by the honourable Supreme court by order dated 11.5.2016 passed in Special Leave to Appeal (Cri.) No.3717/2016. In this case, the applicant/accused apprehends arrest in C.R. No.418 of 2014 registered with R.A.K. Marg police station, Mumbai for the offences punishable under sections 420, 406, 465, 467, 468, 471, 506 r/w section 34 of the Indian Penal Code. One Prashant Vasant Nikam gave complaint against the applicant/accused and other co-accused on 9.12.2014. He purchased a house from the

applicant/accused by making payment time to time by cheque as well as in cash to one firm M/s.Landscape, as told by the learned Counsel for the applicant/accused. The amounts were received by the staff of the applicant/accused, who is the co-accused, namely, Priyanka Ghorpade. She issued receipts against the payment of total amount of Rs.38 lakhs paid by the complainant to the applicant/accused or his associates. He took possession of the said premises and started residing there. However, one Arun Naidu approached him and told that the said flat was allotted to him by Slum Rehabilitation Authority. Thereafter, the complainant approached the applicant/accused and enquired about the transaction. At that time, according to the complainant, though accused No.1 accepted that it was a bogus transaction, he refused to return the money. Therefore, he gave complaint to the police. The offence was registered against the applicant/accused and the co-accused. Payment by the complainant was refused by the applicant/accused and it was submitted that the complainant had different transaction with M/s.Landscape and the applicant/accused has no association with the said M/s.Landscape. Then, the co-accused Priyanka Ghorpade has also refused that she had issued any receipt of the amount in favour of the complainant and Arun Naidu has filed civil suit against the complainant and against the applicant/accused.

2. Mr.Warunjikar, appearing for the applicant/accused, submitted that the applicant/accused has deposited Rs.38 lakhs to prove his bonafides pursuant to the order dated 7.12.2015 in the Registry and which fact is taken note of by order dated 23.12.2015 of this court that the amount of Rs.38 lakhs was deposited in the Registry of this Court. He further submitted that apart from Rs.38 lakhs, the applicant/accused has paid Rs.30 lakhs in cash to the complainant which the complainant has received and has acknowledged by receipt dated 3.10.2016. He has further submitted that in the affidavit, the complainant has said that he has accepted the said money towards full and final settlement, by way of filing consent terms before the High Court in C.R. No.418 of 2014 i.e., the present C.R.

3. The learned Prosecutor has opposed this application and has submitted that the custody of the applicant/accused is required to verify the documents. The complainant is present in the Court.

4. In this case, earlier, this Court has rejected the pre-arrest bail of the applicant/accused after considering the merits of the case as

this Court *prima facie* found that the offences of cheating, misappropriation and forgery have been committed by the applicant/accused. Unfortunately, at the time of passing the said order, due to oversight, the orders dated 7.12.2015 and 23.12.2015 passed by my predecessor were not noticed by me. However, as I recollect, the submissions in respect of payment of Rs.38 lakhs were never advanced before me and the orders dated 7.12.2015 and 23.12.2015 were also not pointed out to this Court and hence, there was no mention in the order in respect of these previous orders. As the honourable Supreme Court has directed this Court to take into account this fact, I have perused the two orders and verified that an amount of Rs.30 lakhs was paid to the complainant by the applicant besides the amount of Rs.38 lakhs deposited in the Court by him. The complainant, who is present in the court, informs the Court that he has received only Rs.30 lakhs, however, for the purpose of full and final settlement, the applicant/accused had promised orally that he would give him a demand draft of Rs.8 lakhs at the time of quashing proceedings.

5. In the circumstances of the case, the interim bail granted earlier on 12.4.2016 is confirmed.

6. Anticipatory Bail Application is disposed of on the above terms.

(MRIDULA BHATKAR, J.)