IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. ANTICIPATORY BAIL APPLICATION NO.988 OF 2017

Pandurang Kaluram Naik .. Applicant
Vs.
The State of Maharashtra .. Respondent

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Mr.Praful Wadde a/w. Mr.Prashant Maggu, Advocate for the Applicant.
Mr.A.R. Kapadnis, APP for the Respondent – State.
Mrs.Sushma Mishra, Advocate for the Intervener.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 28, 2017.

P.C. :

This is an application for anticipatory bail in connection with C.R.No.I-46 of 2017, registered with Koperkhairane Police Station, Navi Mumbai, District – Thane for the offences punishable under Sections 420, 504 and 506 read with Section 34 of the IPC as well as Section 3 of the MOFA Act. Subsequently, offences under Sections 467, 468 and 471 were added.

2 The prosecution case is that the complainant had approached one Ramesh Kohli, the Proprietor of M/s. Star

Developer for purchasing the flat. Informant paid the consideration to Shri Kohli for purchase of the flat no.602. As the possession was delayed, Shri Kohli paid Rs.2,00,000/- as security to the informant. In 2013, the complainant visited the site. It was learnt that Shri Kohli had ran away. It is alleged that the applicant had taken over the construction and had transferred the electric meter to his name and also changed the name of the complex.

3 Learned advocate for the applicant submitted that there is no privity of contract between the applicant and the first informant. He submitted that the complainant had entered into the transaction with Shri.Kohli who did not complete the project. It was further submitted that with regards to the rights of the party, several proceedings are pending in the Court since 2013. It is submitted that the applicant is aged about 70 years. It is submitted that considering the fact that the matter relates to the documents, custodial interrogation of the applicant is not necessary.

4 The application preferred by the applicant was rejected by the Sessions Court. Learned APP submitted that the

applicant was present when the negotiations had taken place with Shri Kohli. It is submitted that in pursuant to the registration of FIR, charge of forgery are added and the investigation is in progress. He pointed out the agreement executed between the applicant and Mr.Kohli and submitted that as per Clause 4 of the said agreement indicates there in case there is any delay on the part of the developer in completion of the development of the said plots within the prescribed period as agreed to hereinabove, the Assignor shall grant a grace period of three months and in the event of further failure, the Developer shall be liable to pay an amount of Rs.50,000/- per month. He further pointed out Clause 16 of the said agreement, wherein it is mentioned that on completion of the said plots, the developer shall clear the total stilt area/car parking area/residential area and 50% of the total stilt area/car parking area/residential area and 55% of the total commercial areas. Learned APP therefore submitted that the applicant had not complied with the clauses of the said agreement. He further submitted that the applicant is not cooperating with the investigation. Learned advocate appearing for the intervener reiterated submission advanced by the learned APP. She submitted that the applicant has committed serious offence and has jeopardised the rights of the purchasers. She

submitted that the applicant have executed agreements during the pendency of this application with regards to the disputed flats with new purchasers on Rs.100/- Stamp Paper. It is therefore submitted that the custodial interrogation of the applicant is necessary.

5 I have perused the FIR and the other documents on record. FIR itself mentions that the agreement was executed by the complainant with Mr.Kohli. A cheque of Rs.25,00,000/- was issued in favour of the complainant by Kohli in accordance with agreement. It appears that the said cheque has been dishonoured. Taking the allegation in the FIR as it is apparent that the agreement was executed between the complainant and Shri Kohli. The rights of the parties including the complainant or the other purchasers are subject matter of the civil proceedings which are pending in the Court wherein both the parties have agitated their claims in respect of the said property. The learned advocate for the applicant submitted that during the pendency of this application no such agreement as alleged has been executed by applicant. The matter relates to the documents. Considering the aforesaid circumstances, anticipatory bail application deserves to be allowed.

6 Hence, I pass the following order:

:: O R D E R ::

(i) Anticipatory Bail Application is allowed;

(ii) Interim order dated 9th June, 2017, is confirmed;

(iii) Applicant is directed to report Koparkhairane Police Station, Navi Mumbai, District – Thane once in a week on Monday between 11.00 a.m. to 1.00 p.m.;

(iv) The applicant is directed to co-operate with the investigation;

(v) Applicant shall not tamper with the prosecution evidence and prosecution witnesses;

(vi) Anticipatory Bail Application stands disposed off accordingly.

(PRAKASH D. NAIK, J.)