IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1312 OF 2016

Rahul Raj Singh. …Applicant
Versus
The State of Maharashtra …Respondent

Mr. Shyam Kalyankar for the applicant.
Mr. Dr.Nilesh Pawaskar, Spl.P.P. a/w Ms. J.S. Lohokare, APP for the State.

CORAM: A.M. BADAR, J.
DATED: 11th OCTOBER, 2017

PC:-

1. The applicant/accused in Crime No 235 of 2016 for the offences punishable under Sections 406 and 420 of the Indian Penal Code registered with Versova Police Station, Mumbai is seeking pre arrest bail.

2. Head the learned advocate appearing for the applicant/accused. By drawing my attention to the First Information Report, the learned Advocate for the applicant argued that the alleged transaction took place way back on 17.12.2010. The applicant/accused had in fact received cheque, only of Rs.20 lakh in pursuant to that transaction. On 09.04.20011 he was threatened with a charge of rape by daughter of the first informant and therefore, he handed over two cheques one for Rs.15 lakh and another for Rs.10 lakh to the first informant. By drawing my attention to various receipts annexed to the application, the learned advocate submitted that, in fact, the applicant had spent an amount of Rs.37.50 lakh for producing a film as agreed between the first informant and the present applicant. He argued that the chart showing gist of receipt as well as all receipts issued by several persons were handed over to the investigators by the applicant when he attended the police station. The learned advocate drew my attention to receipt for Rs.2 lakh in cash executed by Heer Patel -daughter of the first informant. The learned advocate further argued that the First Information Report in question came to be lodged only after Hon'ble Apex Court refused to interfere with the order granting anticipatory bail to the present applicant in Crime No.110 of 2016 by this Court. The prosecuting party had instigated the first informant in Crime No.110 of 2016 to lodge the subject First Information Report against the present applicant. Another lady by named Varsha Bhagnani was set up for lodging report of non-cognizable case against the present applicant and ultimately, she withdrew the said report by moving an application in writing indicating that the daughter of the first informant had instigated her to lodge the said report. The learned advocate further argued that there is no explanation to delay in lodging the First Information Report. In fact, the first informant had agreed to contribute the capital of Rs.3 crores in the project but ultimately failed to honour her commitment.

3. The learned Special Public Prosecutor opposed the application by contending that persons to whom payment was allegedly made were not found. The present applicant is taking different stands at different stages by modulating version to suit his convenience and therefore, as per law laid down by the Hon'ble Apex Court, the accused taking different stand at different stages is not entitled for anticipatory bail. The learned Special Public Prosecutor attempted to draw my attention to the statement of the present applicant recorded by police with a submission that it is a statement under Section 161 of the Code of Criminal Procedure and therefore, the Court should read it for inferring different stands taken by the applicant/accused. The learned Special Public Prosecutor further argued that the daughter of the first informant came to be discharged from Crime No.201 of 2012 registered at the instance of the present applicant as allegations against her were found to be unsubstantiated. She was found to be falsely implicated in the Crime in question. The averments that the applicant was made to issue cheques by threatening him with the charge of rape are not found to have been made contemporaneously. The agreement between the parties is not yet seized and for seizure of the said agreement, custodial interrogation of the present applicant is necessary. The application moved by Varsha Bhagnani is antedated and in fact, it was received by police on 29th July, 2016 i.e. after lodging the First Information Report in question. The learned Spl. Public Prosecution further argued that it is *modus operandi* of the applicant to lure various girls and obtained money from them and then to misappropriate the same. The applicant has never co-operated the police investigation of the Crime in question.

4. I have carefully considered the rival submissions and also perused the First Information Report as well as relevant documents. The day of alleged incident is 17.12.2010. The First Information Report for the same is lodged on 02.07.2016 by informant Geeta Patel. She averred that on 17.12.2010 an agreement was executed by her with the present applicant for producing a movie named "Aaj Dhanda Band Ahe ". First informant Geeta averred that it was decided to share profit and loss of this project equally by her as well as the present applicant. Production was to be managed by the present applicant and if the said film could not be released within stipulated time, then the applicant was to refund the money contributed by her. The first informant further alleged that in pursuant to this agreement she gave a cheque of Rs.20 lakh to the applicant/accused and cash amounting to Rs.5 lacs. According to the averments made in the First Information Report, the original agreement is with the present applicant, whereas, its photo copy is with the first informant Geeta Patel.

5. The First Information Report further avers that after few days first informant Geeta and her daughter Heera Patel made inquiry but found that money/capital contributed by first informant Geeta was not used for the purpose for which it was given by the present applicant. Then there were exchanges of notices between the parties and ultimately, on 09.04.2011, the present applicant handed over two cheques bearing Rs.15 lakh and 10 lakh to her with an affidavit on stamp paper. However, those cheques were dishonoured. First informant further averred that she could not take prompt action in the matter as health of her husband was not well. First informant Geeta Patel concluded that an amount of

Rs.25 lakh was taken from her by the present applicant for producing the film in partnership and had not returned the said amount.

6. Alongwith the application, the applicant has placed on record photo copy of receipts executed by various persons for doing the work of movie such as Director, Screen play writer, Writer, Concept, Casting Production Manager etc. The learned Special Public Prosecutor submitted that these receipts are fabricates and false. The specific question was put to the learned Special Public Prosecutor as to show from the case diary, as to what efforts were taken by the investigators to locate the persons, who have signed receipts. However, the Court could not get any answer to this query. The explanation given is to the effect that the investigation is transferred to the new Investigating Officer.

7. The incident of alleged payment of Rs.25 lakh took place on 17.12.2010. The First Information Report is lodged on 02.07.2016. The explanation of the applicant is to the effect that he had spent more than Rs.37 lakh towards production of the film and has tendered annexed receipts alongwith application. The learned Advocate for the applicant has stated that the copies of all these receipts were handed over to the Investigating Officer when the applicant had attended the concerned Police Station in pursuant to judicial orders. Nothing could be pointed out from the case diary to demonstrate efforts made to trace out persons executing the receipts and genuineness or otherwise all those receipts.

8. Considering the entire background of the matter, the transaction appears to be Civil in nature, wherein both the parties had decided to share profit and loss equally, but the project could not be completed. The first Information Report itself shows that photo copy of the alleged agreement is with the first informant. The report is lodged after more than 5 years from the date of the alleged incident.

9. In this view of the matter, custodial interrogation of the present applicant is not warranted. Therefore, the following order.

ORDER

(i) The application is allowed.

(ii) In the event of his arrest in Crime No.235 of 2016 for the offences punishable under Sections 406 and 420 of the Indian Penal Code registered with Versova Police Station, Mumbai, the applicant /accused be released on bail on executing P.R Bond of Rs.30,000/- on furnishing one or two sureties in the like amount.

(iii) The applicant / accused shall make himself available for interrogation, as and when required by the Investigating Officer.

(iv) As a condition of this order, the applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court or to the Police Officer.

(v) As a condition of this order, the applicant should attend the concern Police Station on 16th October, 23rd October and 30th October 2017 in between 11.00 a.m. to 1.00 p.m. In addition thereto the applicant should attend the concern Police Station as and when directed by the investigator by written notice.

(vi) The application is disposed of.

(A.M. BADAR, J)