IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1858 OF 2017

Vinod Vallabhdas Bathia ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr.A.M. Saraogi for the applicant
Mr. Subir Kumkar for original complainant
Ms.P.P.Shinde,APP for the State.

CORAM: A.M. BADAR, J.
DATED: 31st OCTOBER, 2017

PC:-

1. The applicant/accused in Crime No.9 of 2016 for the offences punishable under Sections 406, 420 r/w Section 34 of the Indian Penal Code registered with Charkop Police Station at the instance of Amul Navnitlal Raval by this application is seeking pre-arrest bail.

2. Heard the learned advocate appearing for the applicant/accused. He drew my attention to the order dated 4th April 2016 passed by this Court in ABA No.462 of 2016 and contended that one of the partner of the applicant has been granted pre-arrest bail on deposit of the amount withdrawn by him from the firm. By drawing my attention to the say filed by the prosecution in the Sessions Court, the learned advocate submitted that other partners namely Lipton Gonsalviz and Rajiv Darji are granted pre-arrest bail on deposit of the amount withdrawn by them from the firm. With this letter the advocate submitted that according to the prosecution case, Rs.58 lakh were paid by the first informant in cash whereas, the balance amount was paid by the first informant by cheque totalling it to Rs. 1,01,50,000/-. The learned advocate further argued that say filed by the prosecution before the Sessions Court shows amount withdrawn by each of the accused from the firm. So far as, the present applicant is concerned, that amount is Rs.25, 05,000/- and accordingly on the liberty of parity by asking the applicant to deposit this much amount he needs to be granted pre-arrest bail.

3. The learned advocate for the applicant further argued that on merit there cannot be any element of cheating because in past, the first informant had invested in 8 projects of the applicant and had obtained delivery of apartments in those projects. Therefore, in submissions of the learned advocate for the applicant there cannot be false representation at the inception. He argued that project at Palghar and Malad could not be materialised because of difficulties which crept in subsequently.

4. The learned APP opposes the application by contending that the applicant has received Rs.33 lakh in cash as per the receipt acknowledged by him and collected by the investigators during the course of investigation. The learned APP further argued that the applicant had withdrawn the amount of Rs.25 lakhs from the bank account of the firm.

5. I have also heard the learned advocate appearing for the intervenor/first informant. He argued that the project at

Malad cannot be materialised because of one partner namely Rajiv Darji has shown that sight as his new project. He argued that the applicant is not entitled for pre-arrest bail unless and until deposit of the entire amount. According to the learned advocate for the first informant custodial interrogation of the present applicant is warranted.

6. I have carefully considered the rival submissions and also perused the case diary. Say filed by the prosecution before the Sessions court, reveals that two partners of M/s Sidharth enterprises namely Lipton Gonsalviz and Rajiv Darji are granted anticipatory bail on condition of depositing the amount withdrawn by them from the firm. This Court by order dated 4th April 2016 had granted pre-arrest bail to co-accused Bharat Bhushan, who is also one of the partner of the firm on depositing of amount of Rs.8,06,000/- which was withdrawn from him from the bank account of the firm. All these three co-accused are partners in Sidharth Enterprises. The present applicant is also one of the partner in the said firm. Hence, on the principle of parity he is entitled for same treatment as is given to other partners.

7. In order to make out the offences punishable Section 420 of the Indian Penal Code the prosecution is required to establish that there was a representation which was false to the knowledge of the accused when it was made. If some subsequent events make such representation unworkable does not make out the offence punishable under Section 420 of the Indian Penal code. In the case in hand, it is seen that the applicant is a builder and had undertaken several projects and the first informant had obtained possession of the apartment from him at least in 8 projects. This fact is neither disputed by the learned APP nor by the learned advocate for the intervenor. The matter will have to be viewed in this angle in order to consider whether the offence punishable under Section 420 of the Indian Penal code is made out or not.

8. Suffice to state that record of investigation reveals that the applicant under his own signature has received cash of Rs.33 lakh from the first informant. He has also withdrawn the amount of Rs.25,05,000/- from the firm named Sidharth enterprises. As reveal from the case diary, the first informant had paid an amount of Rs.1 crore and odd to the firm of which the present applicant is a partner towards the consideration for purchasing the apartments. Those projects at Palghar and Malad cannot not be materialised. Other partners of this construction firm are granted pre-arrest bail on deposit of the amount withdrawn by them from the firm. On the basis of some principle, liberty of the applicant needs to be protected. In this view of the matter, pendency of some other offences against him can be taken care of by imposing further conditions. Therefore, the following order:-

ORDER

i) The application is allowed.

ii) On condition that the applicant should deposit the amount of Rs. 58,05,000/- in this Court within a period of two weeks from today, in the event of his arrest in Crime No. 9 of 2016 for the offences punishable under Sections 406, 420 r/w Section 34 of the Indian Penal Code registered with Charkop Police Station, he shall be released on bail on executing PR bond of Rs.15,000/- and on furnishing surety in the like amount.

iii) As a condition of this order, the applicant to co-operate with the investigating officer by attending the concerned police station as and when directed by the investigators by written notice.

iv) 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) The applicant to surrender his passport to the investigators and he shall not leave India without prior permission of the this court.

vi) The application is disposed of accordingly.

(A.M. BADAR, J)