IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2673 OF 2017

ANSARI HIFZUR REHMAN ABDUL HAMID)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

CRIMINAL APPLICATION NO.1079 OF 2017
IN
CRIMINAL BAIL APPLICATION NO.2673 OF 2017

MOHD. ASLAM SHAIKH)...INTERVENOR

IN THE MATTER BETWEEN

ANSARI HIFZUR REHMAN ABDUL HAMID)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.A.P.Mundargi, Senior Counsel, i/b. Rajeev Sawant and Associates, Advocate for the Applicant.

Mr.M.A.Vaid i/b. Vaid & Associates, Advocate for the Intervenor.

Mr.R.M.Pethe, APP for the Respondent – State.

Mr.S.Sawant, Assistant Police Inspector, M.R.A.Marg Police Station, present in the court.

CORAM : A. M. BADAR, J.

DATE : 27th NOVEMBER 2017

P.C. :

1 The applicant/accused in Crime No.95 of 2017 registered with Police Station M.R.A.Marg, at the instance of Dhanraj Kharatmal – an employee of the Office of Sub-Registrar, Mumbai, as per the directions of the District Registrar, for offences punishable under Sections 419, 420, 465, 467, 468, 471 and 120B of the Indian Penal Code and under Section 82 of the Indian Registration Act, by this application, is seeking his release on bail during the pendency of his trial.

2 Written submissions filed on record by the learned advocate for the intervenor are taken on record.

3 Heard the learned senior counsel appearing for the applicant/accused. He argued that the present applicant/accused is the Director of M/s.Okay Estate Developers Pvt. Ltd., who had

parted with valuable consideration for purchase of the property known as Zainab Manzil/Rajabahadur Mansion from seven persons who were successors in title of the said property. The learned senior counsel argued that the applicant/accused is the victim of the crime in question, but he is unfortunately languishing in jail. The learned senior counsel further pointed out page no.52 of the application which is a receipt dated 9th April 2014 and argued that this receipt is the receipt showing payment of brokerage to the intervenor – Mohammed Aslam Mohammed Husain and the Investigating Officer ought to have shown intervenor - Mohammed Aslam Mohammed Husain as one of the accused in the crime because Mohammed Aslam Mohammed Husain was well aware of the fact that one of the successors in title was not present at the time of the execution of the Sale Deed and somebody else had impersonated him.

4 I have also heard the learned APP as well as the learned advocate for the intervenor – Mohd.Aslam Shaikh. It needs to be pointed out that Mohd.Aslam Shaikh is neither the

First Informant nor the victim of the alleged offence. The learned advocate for the intervenor drew my attention to the report dated 20th March 2017 lodged by the present applicant/accused with the Deputy Inspector General of Registration and submitted that the report in that complaint shows that the present applicant/accused has averred that Mohd.Aslam Shaikh is abusing process of law and he has no intention to repay or refund the amount which is received by him by way of brokerage.

5 The learned APP opposed the application by pointing out that there are five crimes registered against the present applicant/accused.

6 I have carefully considered the rival submissions and also perused the entire material produced on record.

7 It is seen that on 12th September 2011 a Conveyance Deed came to be executed by seven persons posing to be owners of Zainab Manzil/Raj Bahadur Marg, Mumbai in favour of

M/s.Okay Estate Developers Pvt. Ltd. of which co-accused Hamid Ansari is stated to be a Director. The FIR reflects that though Alibhai Makda is successor in title of one of the co-owner of this property, he being resident of the U.K. was not present at the time of execution of the instrument, but somebody else impersonated him.

8 In the case in hand Alibhai Makda has not lodged the FIR. In fact, the aggrieved person due to passing over of the imperfect title is Hamid Ansari of M/s.Okay Estate Developers Pvt.Ltd., but he is also an accused in this case. The FIR is lodged by an employee of the State Government at the instance of his superior Officer. Prima facie, it is seen that the present applicant is also successor in title as his father was one of the co-owner of the property in question. Documents filed on record indicates that the amount of consideration was held in the joint account and subsequently, it was transferred to the respective Trust.

9 Considering the fact that the present applicant/ accused is purchaser of the property in question, and that he has parted with valuable consideration for acquiring this property, though one of the successors in title to the property was not present at the time of executing the Sale Deed in favour of the Company of the present applicant/accused, I am of the considered opinion that further pre-trial detention of the present applicant/accused is not warranted. Infact, the amount paid by the present applicant/accused for acquisition of the property went to the account of the Trust. It is for the Investigator to consider whether the intervenor needs to be arraigned as one of the accused in the crime in question, by considering the record of investigation.

10 Criminal antecedents, if any, of the present applicant/accused, has no bearing on the instant case, as the applicant/accused had paid large amount of money for acquiring the property. In the result, the following order :

ORDER

i) The applications are allowed.

ii) The applicant/accused in Crime No.95 of 2017 registered with Police Station M.R.A.Marg, for offences punishable under Sections 419, 420, 465, 467, 468, 471 and 120B of the IPC and under Section 82 of the Indian Registration Act, is ordered to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/-, and on furnishing surety in like amount.

iii) 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.

iv) The applicant / accused shall not tamper with the prosecution evidence.

v) The applications are disposed of.

(A. M. BADAR, J.)