Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 501 OF 2018

Salim Maqbool Mulani ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 382 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 501 OF 2018

Shree Sai Siddhi Realty ...Intervener
In the matter between
Salim Maqbool Mulani ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 435 OF 2018

Khimji Bera & Anr ...Applicants
Versus
The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 381 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 435 OF 2018

Shree Sai Siddhi Realty ...Intervener
In the matter between
Khimji Bera & Anr ...Applicants
Versus
The State of Maharashtra ...Respondent

Ms. Chhaya Pandya, a/w Ms. Rajashree Sakhalkar, i/b D. Sakhalkar, for the Applicant in ABA 501/18.
Mr. Sandeep Karnik, for the Applicant in ABA435/18.
Mr. Ameet Palkar, APP for the State.
Mr. Ashish Sawant, for the Intervener.
Mr. Jadhwar, API, Kandivali Police Station.

CORAM: A. S. GADKARI, J
DATED: 11th JUNE, 2018

PC:-

1. The Applicants in both the applications are apprehending arrest in CR No.25 of 2018 dated 5th February, 2018 registered in Jogeshwari Police Station, Mumbai under Section 419, 420, 465, 467, 468, 471, 406 r/w 34 of Indian Penal Code.

2. Heard the learned Counsel for the applicants at length, the learned Counsel appearing for the first informant at greater length and the learned APP. Perused the record of investigation.

3. The First Information Report ("FIR", for short) is lodged by Shri. Dhiren Shah stating that the applicants Khimji Bera and Keshavji Bera along with their partner Vinod Faria represented themselves to be owners of a piece of land bearing CTS No.235, admeasuring 314.20 sq. mtrs.

lying and situate at village Mogra, Taluka Andheri, District Mumbai and executed a registered sale deed dated 3rd October, 2011 for 2/3rd area of the said piece of land. That 1/3rd area of the said land was under attachment by the Income Tax Department as the partner of said firm Mr. Vinod Faria was facing prosecution and/or proceedings by the Income Tax Department. It is further stated that the applicant Salim Mulani (ABA 501/2018) was an occupant of a tenement constructed on the said piece of land and he for vacating the said land had accepted sum of Rs.10,00,000/- from the applicants Khimji Bera and Keshvaji Bera. It is the grievance and/or allegation of the first informant that the applicants Khimji Bera and Keshvaji Bera by making false representation to the concerned authorities got a document of sale executed in their favour from its landlord Shri. Peter Joseph Gomes to which the tenement holder Salim Mulani was a confirming party. That after registration of the sale deed dated 3rd October, 2011 thereby conveying the said apportioned land in favour of the first informant, it was subsequently revealed that the said Peter Gomes was a fictitious entity produced by Khimji Bera and Keshavji Bera for registration of the said document in their favour on 4th March, 2007. As the applicants Khimji Bera and Keshavji Bera failed to hand over the original document showing the title of Peter Gomes of the said property, the present crime has been registered on 5th February, 2018.

4. At the outset, it is *prima facie* clear that applicant Salim Mulani has not committed any crime least to say a crime under Section 409 and/or 420 of Indian Penal Code. As far as the applicants Khimji Bera and Keshavji Bera are concerned, all the documents involved in the present crime are duly registered with the competent authority and there is no question of forging signatures of anybody else.

It is to be further noted that before purchasing the said immovable property from the applicants Khimji Bera and Keshavji Bera, it appears from the record that the first informant being a man prudence did not take pains to take search pertaining to the title of said property either through an advocate or through a registered searcher. Undoubtedly, the first informant is in possession of the said property in furtherance of registered sale deed dated 3rd October, 2011.

It *prima facie* appears that with a view to cover his mistakes and/or errors while purchasing the suit property, the first informant has lodged the present crime.

5. In view thereof the applicants are entitled to be protected by pre-arrest bail.

Hence the following order:-

(i) In the event of arrest in CR No.25 of 2018 dated 5th February, 2018 registered in Jogeshwari Police Station, Mumbai under Section 419, 420, 465, 467, 468, 471, 406 r/w 34 of Indian Penal Code, the Applicants be released on bail on their furnishing P.R. bond of Rs.25,000/- each with one or two separate solvent local sureties in the like amount.

(ii) The Applicants are directed to attend the Investigating Officer as and when called for between 11.00 am. to 01.00 pm. and to join the process of investigation till submission of final report. It is needless to mention that before calling the applicants to the police station, the concerned Investigating Officer shall issue a notice under Section 160 of Cr.P.C. to the applicants.

(iii) The Applicants shall not tamper with the evidence and/or influence the prosecution witnesses.

6. The Anticipatory Bail Applications Nos.501 of 2018 and 435 of 2018 are allowed in the aforesaid terms.

7. In view of the Order passed in Anticipatory Bail Applications, Criminal Applications Nos.382 of 2018 and 381 of 2018 respectively do not survive and are accordingly disposed off.

[A. S. GADKARI, J.]