IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL /CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.809 OF 2018

Ramesh Gulab Chaudhari .. Applicant
Vs.[
State of Maharashtra .. Respondent

……
Mr.Vaibhav Ugle, Advocate for the Applicant.
Mr.Y.M. Nakhwa, APP for Respondent – State.
……

CORAM : PRAKASH D. NAIK, J.

DATED : JULY 31, 2018.

P.C. :

The petitioner has invoked inherent powers of this Court under section 482 of the Code of Criminal Procedure challenging the order dated 27th March, 2018, passed by Ad-hoc Additional Sessions Judge–1 Raigad Alibag allowing Criminal Miscellaneous Application No.138 of 2017, preferred by the State of Maharashtra for cancelling the bail granted to the applicant by the Court of Judicial Magistrate First Class Panvel vide order dated 27th January, 2017.

2 It is the case of the prosecution that the first informant was to purchase a flat in the project which was named as Balaji

Residency. The first informant had paid substantial amount towards the purchase of the flat. The project itself has not commenced after waiting for a long time. He even sought refund of the amount. The company however did not allot the flat nor refunded the amount to the first informant. Hence, he was constrained to file the first information report. The accused company M/s.Tirupati Balaji Builders and Developers Ltd. was registered under the Companies Act, 1956. Mahendra Pawankumar Singh and his wife Rinku Singh were the Directors of the said company as shown in the Memorandum of Association. The applicant was also inducted as Director of the said company from 4th June, 2012 to 1st of July, 2015. The applicant resigned as a Director of the Company on 1st July, 2015. Several purchasers of the flats deposited the money and since the project could not proceed further and the promises which were made to the purchasers were not fulfilled, the first information report was registered with Khandeshwar police station vide CR No.I-81of 2016 for offences under Sections 409, 420 read with 34 of IPC and Section 4(1), 5, 8 and 13 of the MOFA Act.

3 The applicant preferred application for anticipatory bail before the Sessions Court as well as this Court. Both the applications were rejected. The applicant was, thereafter, arrested

on 11th January, 2017. He was produced before the remand Court for the purpose of seeking police custody. The remand Court had granted police custody till 18th January, 2017. Thereafter, he was remanded to judicial custody. The applicant preferred application for bail before the Court of Judicial Magistrate First Class at Panvel on 18th January, 2017. The application was opposed by the investigating officer. The learned Magistrate, by order dated 27th January, 2017, granted bail to the applicant on certain terms and conditions. The applicant was directed to co-operate with the investigating officer and also directed to remain present for investigation, as and when called by the investigating officer. It was further directed that the applicant shall not tamper with the evidence or put pressure on the witnesses. While granting bail, the Court observed that the applicant has stated that he withdrawn amount form bank.

4 The State preferred an application for cancellation of bail on 16th February, 2017. In the said application it was alleged that the accused had promised various customers of allotment of flats with a booking amount. Several investors which were about 1277 had deposited the money for purchase of flat with accused company. Crores of rupees were involved in the said transaction and the persons who had deposited the money were cheated by the

accused. It was contended that the order passed by the Court of learned JMFC is erroneous and the investigation is hampered on account of grant of bail. It was contended that the court has not considered the seriousness of the offence. The application for anticipatory bail preferred by the applicant accused was rejected considering his involvement in the crime. It was also contended that the applicant was inducted as director for a period from 4th June, 2012 to 1st July, 2015. The applicant was instrumental in allotting one flat to two different customers. He had also issued receipts with regard to booking amount. It is necessary to find out whether he has misappropriated the amount which was received towards the receipt of the flat. The investigation was at the critical stage when the Court had granted bail to the applicant. The learned Sessions Judge by order dated 27th March, 2018, allowed the application by setting aside the order granting bail passed by the Court of JMFC, Panvel.

5 Learned advocate for the applicant made following submissions:

(i) Applicant was working as real estate agent. The applicant was approached by co-accused Mahendra Pavan Kumar

Singh who was Director of M/s.Tirupati Balaji Builders and Developers Private Limited. Being real estate agent the applicant has shown several flats available in the locality to the co-accused. However, the co-accused offered the applicant the job in the company by representing that his company is flourishing and the applicant would have lucrative career if he joins the company. It was also represented that he is in need of hard working people like applicant and offered him salary of Rs.50,000/-, per month by way of remuneration. The applicant was, thus, inducted as Director of the Company from 4th June, 2012. He did not understand the implication of becoming a Director of the Company as much as he thought that the salary would definitely help him with his day to day life. Subsequently he resigned as Director of the Company on 1st July, 2015, which is fortified by form DIR 12 which has been annexed to this application.

(ii) The applicant was arrested on 11th January, 2017, and he was in police custody till 18th January, 2017. Thereafter, he was remanded to judicial custody.

(iii) The car viz Mahendra Scorpio was seized by the police on the ground that the same has been obtained from the funds of the company. However, the car was purchased by the applicant on loan from the Bank and not from the funds of the company as alleged by the prosecution. Reliance is placed the documents related to the loan of the said car.

(iv) The other employees of the company holding similar position in the company had preferred anticipatory bail application being ABA No.447 of 2016, before the Sessions Court Raigad. The said application was allowed by the Sessions Court.

(v) The applicant was not named in the first information report. The main accused Mahendra Pawankumar Singh is in custody since last two years. The other accused whose names were reflected in the first information report were granted anticipatory bail. The petitioner was not shown as an accused in the first information report.

(vi) The applicant has not admitted that he has received few receipts towards the booking amount. The said fact was admitted by him during the course of investigation. However, the amount towards the booking of the flat has not gone into his personal account. The amount towards the booking was credited into the account of company. There is no evidence that the applicant has misappropriated any amount towards the booking of the flat by the purchasers.

(vi) There is nothing on record to show that the applicant has tampered with the evidence or that he has not attended the Court. The investigation is completed and the charge – sheet has been filed. It is submitted that no purpose will be served by keeping the applicant in custody. The bail has been cancelled after the period of almost one year after the grant of bail by the Court of JMFC Panvel.

(viii) During the pendency of his application for anticipatory bail, the applicant had attended the police station and has co-operated with the investigation. The police did not make out any ground for police custody and hence the remand Court has granted judicial custody on 18th January, 2017,

6 Learned APP submitted that the applicant is involved in

the crime. The learned Magistrate ought not to have granted bail to the applicant. Several purchasers were duped by the accused company and the applicant was one of the Director of the company. He was instrumental in issuing receipt towards booking amount and that he had also allotted one flat to two persons. It is submitted that the bail was granted when the investigation was at the crucial stage. The court has not considered the magnitude and seriousness of the offence while granting bail. Huge amount is involved in this case and the purchasers were duped to the extent of crores of rupees. The applicant was therefore not entitled for grant of bail. The learned Magistrate has not taken into consideration the fact that the anticipatory bail application preferred by the applicant before the Sessions Court as well as this Court, was rejected on the ground that there is sufficient evidence against him to establish his involvement in the crime.

7 Having heard both the sides and on scrutiny of the documents on record the factual aspects which emerges are t hat the first information report was registered vide CR No.I-81 of 2016 for offences under Section 420, 409 read with 34 of IPC and Section 4(1), 5,8, 14 of the MOFA Act. All the offences are triable by the Court of Magistrate. The applicant was arrested on 11th

January, 2017. The principal accused Mahendra Singh was also arrested and he is in custody for a period of about two years. The applicant was not named in the first information report. However, the other employees were named in the first information report along with Mahendra Singh. The FIR was lodged against Mahendra Singh, Bablu Gupta, Vidya Prakash Singh, Alok Singh and one Snehal. It was alleged that about 154 persons were promised flats and huge amount was collected from the purchasers of the flat and promises were not fulfilled. The other persons had preferred applications for anticipatory bail which were apparently allowed. While granting bail, the learned Magistrate has observed that the during the course of investigation applicant has disclosed that he was acting at the instance of the main director. He had not withdrawn or misappropriated any amount. He has merely signed some receipts. The Court also took into consideration the submission of the prosecution that the applicant was responsible for issuing receipts as well as allotment of one flat to two customers and investigation is required to be carried out in this regard. The learned Magistrate observed that the case is triable before the Magistrate. The charge sheet against the other accused has been filed which gives an idea as to what is the involvement of the accused in the crime. The applicant has admitted to have singed the receipts of booking amount and has also contended that on some receipts his signature was not appearing. The applicant is not likely to abscond and there is no likelihood of tampering with the evidence as the witnesses are the persons who had deposited the amount towards the booking of the flats. Considering the circumstances, the bail was granted by the Court. However, the Sessions Court has cancelled the order granting bail on the basis of the submissions made by the prosecution. The Sessions Court had proceeded on the basis that the offence is serious and huge amount is involved and that the offence is required to be viewed seriously and considered as grave offence. The judicial Magistrate First Class has not considered the nature of offence and the observations made in anticipatory bail application. the Sessions Court also observed that the applicant is tempering with the prosecution witnesses and he is not attending the Court. It was also observed that the accused had received an amount from the complainant and other witnesses and the possession of flat was not given to them. The agreements were also no registered. It is pertinent to note that the bail was granted by the learned Magistrate on 27th January, 2017. The said order was set aside by the Sessions Court after a period of one year on 27th March, 2018. The charge – sheet has been filed against the applicant – accused.

The grievance of the prosecution that investigation is at the crucial stage, is out of place as the investigation is complete. The principal accused is in custody since last two years. There is nothing on record to show that the applicant has tampered with the evidence and that he has not attended the Court. Nothing was brought to the notice of this Court in that regard. The offences were triable by the Court of Magistrate. It is also pertinent to note that the applicant was arrested on 11th January, 2017, and, he was in police custody till 18th January, 2017. Obviously, the Court was not satisfied with the prayer for extension of police custody and was pleased to remand the the applicant to Judicial custody. The question of hampering investigation, does not arise. The prosecution has relied upon some receipts which were purported to have been signed by the applicant and that a single flat was allotted to different persons. It is pertinent to note that the amount which was received towards the booking of the said flats was credited to the accounts of the company. The prosecution has not established that the applicant has received or misappropriated any amount which was received towards the booking of the flat. The transaction in relation to the booking of flats and issuing receipts was also carried out by other accused. The other accused except the main Director are granted bail. The vehicle was also purchased by the applicant by obtaining loan amount and it is not out of the proceeds of the company. Taking into consideration all the circumstances, the bail granted to the applicant ought not be cancelled and hence, the order passed by the Sessions Court deserves to be set aside.

8 Hence, I pass the following order:

:: ORDER ::

(i) Criminal Revision Application No.809 of 2018 is allowed;

(ii) The order dated 27th March, 2018, passed by Ad-hoc Additional Sessions Judge, Raigad–Alibaug allowing Criminal Miscellaneous Application No.138/2017, is set aside;

(iii) Order dated 27th January, 2017, passed by the Judicial Magistrate First Class, Panvel, is restored.

(PRAKASH D. NAIK, J.)