

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 217 OF 2017

Mr. Umakant Govind Parab, ...Applicant.
Age 53 years,
Residing at E-43, Ambekar Nagar,
G.D.Ambekar Marg, Parel,
Mumbai 400 012.

vs.

1.M/s. Karishma Builders.
2.Mrs.Lalita Santosh Thorat,Proprietress.
3.Mr. Santosh Baban Thorat, Proprietor.
Respondent Nos. 2 and 3 residing at
C/o. Anushka Rokade,
Room No.402, Nyaneshwari Building,
Kharegaon, Kalwa, Thane(W).

4.The State of Maharashtra,
Naupada Police Station,Thane(W).

...Respondents.

Mr. Umakant Parab- Applicant in person.
Mr. Manoj Bhatt for Respondent Nos. 2 and 3.
Mr. V. V. Gangurde,APP for the State.

CORAM : A.S.GADKARI, J.
DATE : 18th April, 2018

P.C.

1. This is an application under Section 439(2) of the
Code of Criminal Procedure, 1973 for quashing and setting

aside, the Order dated 17.5.2016 passed below Exhibit-1 in Anticipatory Bail Application No.1100 of 2016 thereby granting pre-arrest bail to the respondent Nos. 2 and 3 and Order dated 24.10.2016 passed below Exhibit-1 in Criminal Misc. Application No.298/2016 thereby not entertaining the application of the applicant for cancellation of bail of the respondent Nos. 2 and 3 by the learned District Judge-5 and Additional Sessions Judge,Thane.

2. The applicant is the first informant in CR No.I-92 of 2016 under Section 406, 420, 504, 506 read with 34 of the Indian Penal Code registered with Naupada Police Station,Thane City.

It is the case the case of the applicant that the respondent No.2 Mrs. Lalita Santosh Thorat is the Proprietress of M/s. Karishma Builders. That, the respondent No.3 Mr. Santosh B. Thorat is the husband of respondent No.2 and is de-facto conducting the affairs of the said firm namely M/s. Karishma Builders. (the respondent Nos. 2 and 3 are hereinafter referred to as “respondents” for brevity). That, the respondent Nos. 2

and 3 induced the applicant to purchase Flat Nos. 202 and 401 in their proposed building namely “Karishma Estate” and to pay a total consideration of Rs.30,00,000/- in the year 2014. It was revealed to the applicant that the said flat No.202 in the said proposed building was already allotted/sold to Mr. Eknath Ghase (land owner) and despite the said fact the respondents made false representation to him and induced him to part with the said huge amount. The said amounts were accepted during the period ranging from 25.2.2014 to 25.9.2014. That, as per the agreement and despite lapse of substantial period the respondents did not give possession of the said flats to the applicant he filed the aforestated complaint against the respondents.

3. The record indicates that the applicant had initially lodged the complaint with the concerned Police Station and therefore, the respondents preferred Anticipatory Bail Application No.37 of 2016 before the Sessions Court at Thane. During the course of the arguments in the said application the respondents submitted before the said Court that, they had accepted Rs.10,00,000/- towards the

sale of Flat No.401 from the applicant. That, the respondents were ready to give flat to the applicant or to refund the amount as per the Memorandum of Understanding executed between the parties along with the compensation. It appears from the record that, the learned APP. appearing for the State in the said application made a statement before the Court that, crime was not yet registered and therefore, a blanket protection would not be justified. The learned District Judge-5 and Additional Sessions Judge, Thane after taking into consideration the solemn statement made by the respondents i.e. they were ready to give flat or refund the amount as noted earlier and in view of the fact that crime was not registered till 6.1.2016, was pleased to dispose of the said application with directions to the police to give a prior notice for 48 hours in case the crime is registered under Section 406, 420 read with 34 of the Indian Penal Code against the respondents, by its order dated 6.1.2016.

4. The record further indicates that the police registered the aforesaid crime i.e. CR No. I-92 of 2016 on 22/3/2016

and therefore, the respondents filed Anticipatory Bail Application No.1100 of 2016 before the Sessions Court at Thane. In the said application, the respondents represented that the respondent- Mr. Santosh B. Thorat is the Proprietor of M/s. Karishma Builders and respondent No.2 Mrs. Lalita Santosh Thorat is just a co-proprietress for name sake and she does not participate in the business transaction of the said firm.

It is to be noted here that, as per the record, the said statement is ex-facia false as the same is contrary to the evidence produced by the applicant i.e. as per the Certificate issued by the Registrar of firms it is the respondent Mrs. Lalita Santosh Thorat who is the proprietress of the said firm. That, the respondent No.3 Mr. Santosh B. Thorat was conducting the business on behalf of the said firm.

5. In the said application also, the respondents made a categorical and specific statement that they were ready and willing to hand over the possession of the flat to the applicant herein. The said averment is made in Para-14(d)

of the said application.

The respondents made a solemn statement before the concerned Court that they were ready to provide the flat as per the old agreement or refund the amount accepted by them to the applicant. On the basis of the said solemn statement made by the respondents before the concerned Court, The learned District Judge-5 and Additional Sessions Judge, Thane by its Order dated 3.5.2016 passed below Exhibit-3 in ABA No.1100 of 2016 was pleased to grant interim relief in favour of the respondents.

The said Anticipatory Bail Application No.1100 of 2016 was thereafter finally heard on 17.5.2016. At the time of hearing of the said application the respondents again made a categorical and solemn statement before the concerned Court that they were ready and willing to hand over the possession of the flats in dispute. The respondents have also submitted that, towards the repayment they have issued cheques in favour of the applicant but they were dishonoured and therefore, the applicant has filed the Criminal Case Nos.1522/2015 and 1524 of 2015 and the

same are pending. The respondents have further made a categorical statement before the concerned Court that they were ready and willing to refund the amount with interest to the applicant. That, the respondents had further made a solemn statement before the concerned Court that they agree to repay the amount of Rs.30,00,000/- within a period of one month. The learned District Judge-5 and Additional Sessions Judge, Thane by recording and accepting the solemn statement made by the respondents was pleased to confirm the interim relief granted by Order dated 3.5.2016 by its order dated 17.5.2016. The learned Judge in Para-3 of its operative part of the Order dated 17.5.2016 has specifically mentioned that the respondents have agreed to refund Rs.30,00,000/- within one month and if they failed to do so, the applicant is at liberty to take suitable action.

6. As the respondents failed to comply with their solemn undertaking and/or statement made before the Sessions Court and as has been recorded in Order dated 17.5.2016 the complainant/applicant was constrained to file Criminal

Misc. Application No.298 of 2016 for cancellation of pre-arrest bail granted to the respondents by an Order dated 17.5.2016.

7. At the time of hearing of the said application the respondents again made a solemn statement that they were ready and willing to pay the agreed amount even on 24.10.2016. The learned District Judge-5 and Additional Sessions Judge, Thane was therefore pleased to dispose of the said application by its Order dated 24.10.2016 on the ground that the respondents expressed their willingness to repay the amount as agreed by them, by the impugned Order dated 24.10.2016.

In the premise, the present application is filed.

8. Heard the applicant in person and Mr. Manoj Bhatt learned counsel appearing for respondent Nos. 2 and 3 at length and also heard the respondent No.3 in person. Perused the entire record.

9. As noted in Order dated 4.4.2018 by this Court, this matter was adjourned from time to time with a view to facilitate the respondents to have deliberation and or

settlement with the applicant who is suffering from various ailments and has undergone eight operations and several surgeries and in order to arrive at an amicable settlement in that behalf, however, as per the submissions of the learned counsel for the respondents, the respondents were not in a position to arrive at any amicable settlement and therefore, this Court by an Order dated 17.4.2018 directed the respondents to personally remain present in Court on 18.4.2018 with a view to have dialogue with the respondent No.3 Mr. Santosh B. Thorat. The respondents accordingly appeared before this Court on 18.4.2018. The respondent No.3 for himself and on behalf of respondent No.2 gave innumerable excuses in not complying with the solemn statement made by them before the Sessions Court on earlier occasions and kept on submitting that he is still ready and willing to settle the matter. This Court observed that the statements made by the respondent Nos. 2 and 3 are empty assurances and made only to procure time and to procrastinate the hearing of the application.

10. This Court thereafter heard Mr. Bhatt, learned counsel

for the respondents at length.

Mr. Bhatt, learned counsel for the applicant submitted that the statement made by the respondents for making payment of Rs.30,00,000/- to the applicant cannot be treated as a condition for grant for pre-arrest bail. That the operative part of the order dated 17.5.2016 does not impose such condition. He further submitted that Para 3 of the Order dated 17.5.2016 only mentions about the agreement of the respondents to pay Rs.30,00,000/- within a period of one month from the date of passing of the said Order however, it cannot be construed that if the respondents failed to comply with the said agreement/statement their pre-arrest bail is liable to be cancelled on that ground. He submitted that the order passed by the Trial Court in Criminal Application No.298/2016 is just and proper and need not be interfered with.

11. As noted earlier and at the cost of repetition, it is to be noted here that, the respondents first made solemn statement before the Sessions Court on 6.1.2016 about

their willingness to refund the amount accepted by them from the applicant in Anticipatory Bail Application No.37 of 2016. The respondents further made solemn statement for giving possession of the flats and/or to refund the amount to the applicant on 3.5.2016 in application filed below Exhibit-3 in Anticipatory Bail Application No.1100 of 2016. The respondents continued to make such solemn statement before the Sessions Court at the time of final hearing of Anticipatory Bail Application No.1100 of 2016 which has been categorically recorded by the concerned Court in its impugned Order dated 17.5.2016. Even at the time of hearing of Misc. Application No.298 of 2016 which was filed for cancellation of pre-arrest bail granted to the respondents by an Order dated 17.5.2016, the respondents further made solemn statement that they have agreed to refund Rs.30,00,000/- to the applicant and they were ready to pay the amount to the applicant. The said statement has been recorded in Para-21 of the order dated 24.10.2016.

12. As noted earlier, even today, except giving

innumerable excuses in not complying with the solemn statement made by them the respondents exhibited that they are not interested in complying with the solemn statement made before the Sessions Court from time to time. It is thus clear that the respondents made the said solemn statements before the Sessions Court from time to time only with a view to procure favourable orders of pre-arrest bail in their favour and without any intention to comply with the same. It further clearly appears from the record that the respondent Nos. 2 and 3 have made absolutely false statement before the Sessions Court for getting favourable orders of pre-arrest bail in their favour. The said statements were made with full knowledge that the respondent Nos. 2 and 3 were unable to comply with the same and despite the said fact they continued to make such statements from time to time. The respondent Nos. 2 and 3 have thus taken the judicial proceedings for granted by making patently false statements. As noted earlier even today the respondent No.3 with utmost brazenness at his commend further tried to give assurance on behalf of

respondents, to this Court that he is still ready and willing to repay the amount to the applicant however, at the same time expressed inability to repay the said amount immediately and/or within a period of 15 days from today. In the considered opinion of this Court the respondent Nos. 2 and 3 have shown scant respect to the solemn statement made by them before the Court of Sessions at Thane and have clearly failed to comply with it. The respondent Nos. 2 and 3 therefore, do not deserve any leniency or sympathy hereinafter. It is the settled position of law that an order procured by playing fraud and/or by making false statement before the Court should not remain in force and needs to be quashed and set aside on that count alone.

13. In view of the above, the impugned Orders dated 17.5.2016 passed in Anticipatory Bail Application No.1100/2016 and dated 24.10.2016 passed below Exhibit-1 in Misc. Application No.298/2016 are quashed and set aside and pre-arrest bail granted to the Respondent Nos. 2 and 3 by Order dated 17.5.2016 is hereby cancelled.

The Investigating agency is hereby directed to take appropriate steps as may be permissible under the law.

14. Application is allowed in the aforesaid terms.

15. At this stage, the learned counsel for the respondent Nos. 2 and 3 submitted that the respondents would like to challenge the present order before the Hon'ble Supreme Court and therefore, the operation and implementation of the present order may be stayed for a period of four weeks from today.

At the request of the learned counsel for the respondent Nos. 2 and 3 the operation and implementation of the present order is stayed for a period of four weeks from today.

(A.S.GADKARI, J.)