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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 845 OF 2017

Hemant Dattatraya Joshi & Ors.

... Applicants

V/s.

The State of Maharashtra & Anr

... Respondents

Mr. A.A.H. Ponda i/b Mr. Mihir Joshi for Applicants.

Ms. J.S. Lohokare, APP for State.

Mr. Shirish Gupte, Senior Advocate a/w Asmita Sarangdhar
for respondent No.2.

CORAM : A.S.GADKARI, J.

DATE : 6th July 2018.

P.C.:

1] By an Order dated 5th May 2017, the applicants were granted interim relief.

2] Heard the learned Counsel for the applicant, the learned Senior Counsel for the first informant and the learned APP. Perused the record of investigation.

3] The first information report is lodged on 24.3.2017 by Shri Vishwanath R. Panvelkar, a Developer/Builder by profession. The

prosecution case in brief is that, the father of applicant No.1 namely Shri Dattatraya N. Joshi was the owner of piece and parcel of land lying at village Kulgaon, Badalapur bearing Survey no.41/3 admesuring about 11477.32 sq.mtrs. That the said land was converted into non-agricultural use. The applicant Nos.1 and 2 are the son and daughter of Shri Dattatraya N. Joshi respectively and the applicant No.3 is the broker in the sale transaction. It is stated that, the said Shri Dattatraya N. Joshi by suppressing the fact that, he had already sold the said piece of land to various other persons, induced the informant to enter into a Development Agreement dated 9.2.2000 and accepted consideration of Rs.75,00,000/- (Seventy Five Lakhs) in that behalf. The applicant No.1 is a witness to the said Agreement. That the said Shri Dattatraya N. Joshi expired in the year 2008. As stated earlier, out of the said larger piece and parcel of land, a piece of land admeasuring about 4872.63 sq.mtrs was earlier sold by Mr. Joshi to Shri Natwarlal T. Mehta and others by way of an Agreement dated 17.6.1994. That a Civil Suit bearing No.71 of 2000 was instituted by Shri Natwarlal Mehta and others and the said suit was decreed on 3.5.2003. For execution of the said decree the concerned Court appointed an Officer as Court Commissioner to execute a Sale Deed in fvour of said Mr. Natwarlal

Mehta. It is alleged that, the applicants herein did not disclose the fact of sell of the property to Shri Natwarlal Mehta to the first informant at the time of execution of Development Agreement dated 9.2.2000. It is further stated that, the applicants by keeping the first informant in dark, accepted valuable consideration for the same. It is alleged that, the applicant No.3 under the pretext of marriage in his house induced the informant to further part with an amount of Rs.15.00 lakhs. In the premise the first information report is lodged.

4] Shri Gupte, the learned Senior Counsel appearing for the first informant in opposition to the application submitted that, it is not the first informant alone who has been cheated but there are various other persons also with whom the said Shri Dattatraya N. Joshi and the applicant Nos.1 and 2 have entered into an Agreement and have accepted valuable consideration from them. The applicants sold the property to various entities and thus the commission of an offence as contemplated under Section 420 of the Indian Penal Code is apparent. He submitted that, unless and until the applicants are custodially interrogated, the entire truth behind the present crime will not be revealed and therefore the present application may be dismissed in limine.

5] Perusal of the record of investigation would indicate that the said Shri Dattatraya N. Joshi had entered into an agreement dated 17.6.1994 with Shri Natwarlal T. Mehta and others. That the said Shri Dattatraya N. Joshi had also entered into an agreement for development of the said property admeasuring about 11477.32 sq.mtrs. with the first informant herein dated 9.2.2000. Both the agreements dated 17.6.1994 and 9.2.2000 are registered agreements. When it came to the knowledge of Shri Natwarlal T. Mehta that the said Shri Dattatraya N. Joshi has also entered into agreement dated 9.2.2000 with the first informant herein, he filed a civil suit bearing Special Civil Suit No.71 of 2000 in the Court of Civil Judge, Senior Division, Kalyan for specific performance of agreement dated 17.6.1994 with allied reliefs and for declaration that the Development Agreement executed by Shri Dattatraya N. Joshi with the first informant herein dated 9.2.2000 be declared sham, bogus and is not binding on Shri Natwarlal Mehta and others. The learned Civil Judge, Senior Division, Kalyan by its Order dated 3.5.2003 passed a Decree in favour of Shri Natwarlal T. Mehta and others and also granted various reliefs in their favour and declared that the Development Agreement executed by Shri Dattatraya N. Joshi with first informant dated 9.2.2000 is

sham and not binding on the said Shri Natwarlal Mehta and others i.e. the plaintiffs therein.

The record further indicates that, against the said Judgment and Decree dated 3.5.2003, the first informant preferred a Civil Writ Petition bearing No.4570 of 2007 in this Court which came to be dismissed summarily by an Order dated 27th August 2007. The first informant thereafter preferred Special Leave Petition bearing No.023538/07 before the Honourable Supreme Court which has also resulted into dismissal by an Order dated 25.7.2011. A Review Petition filed by the first informant has also been dismissed by the Honourable Supreme Court by its Order dated 12.12.2012.

The first informant thereafter filed a Suit for specific performance of Agreement dated 9.2.2000 in the Court of Civil Judge, Senior Division at Kalyan on 9.3.2017 and the same is pending for final adjudication.

It further appears from the record that, against the Judgment and Decree passed in favour of Shri Natwarlal Mehta, the first informant has filed a First Appeal before the District Judge at Thane in 2017 and the same is also pending for final adjudication.

6] In the aforesaid background, the present crime has been registered on 24.3.2017 as per the facts briefly mentioned in the forgoing paragraph. It is to be noted here that, before execution of Development Agreement dated 9.2.2000, the first informant, being a builder/developer by profession did not take pains to take search of the property in question which he wanted to take up for development from Shri Dattatraya N. Joshi and instead the first informant proceeded to allegedly advance or part with the huge amount of Rs.75.00 lakhs in favour of said Shri Dattatraya N. Joshi.

7] I have personally gone through the entire record of investigation and copies of agreements which are seized by the Investigating Officer. It clearly reveals that the applicant No.1 is the witness for execution of the said agreement dated 9.2.2000 and apart from witnessing the execution of said agreement, prima facie it appears that, he has no role to play in the alleged crime. The applicant No.2 is the daughter of Shri Dattatraya N. Joshi and prima facie it appears that, being a legal heir and subsequently under the orders of Civil Court, executed certain documents in favour of Shri Natwarlal Mehta and others and apart from this, she has no other role to play in the present crime. The applicant No.3

is a third party at whose mediation it is alleged that, the said agreement dated 9.2.2000 was executed by Shri Dattatraya N. Joshi in favour of the first informant and apart from the said fact, the applicant No.3 has also no role to play in the present crime.

8] After taking into consideration the aforesaid chronology, the factual position emerges on record that, when the first informant failed to get favorable reliefs from all the Courts including the Honourable Apex Court, he belatedly and as an afterthought filed the present crime on 24th March 2017.

9] After perusing the entire record of investigation and the various facts narrated hereinabove, it clearly appears that, the investigation of the present crime is solely based on documents which have been already seized by the Investigating Officer and therefore this Court is of the view that, for further investigation of the present crime, the custodial interrogation of the applicants is not necessary.

10] In view thereof, interim relief granted by Order dated 5th May 2017 is hereby confirmed.

11] Application is accordingly allowed.

(A.S.GADKARI, J.)