

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIATORY BAIL APPLICATION NO.952 OF 2018

Anwar Lakdawala, Age 51 years,
Occ. Director, Office at 1st Floor,
Lathiwala Mansion, Shivdas Chapsi Road,
Mazgaon, Mumbai-400 008.

Applicant

versus

1. The State of Maharashtra.
2. Rajesh Chopadekar,
R/o.1C/13, Indrayani Society,
Gen.A.K.Vaidya Marg, Goregaon (E),
Mumbai.

Respondents

Mr.Rajendra Rathod with Mr.Ali Bubare for applicant.
Mr.Dhiraj Mirajkar with Ms.Reshma Gujaran for intervenor.
Mr.R.M.Pethe, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 10th September 2018

PC :

1. This is an application for anticipatory bail in connection with CR No.224 of 2017 registered with Charkop Police Station for offences under Sections 420, 465, 467, 468, 471 read with Section 120B r/w Section 34 of Indian Penal Code. The first information report was lodged against several persons.

2. It is the prosecution case that complainant was in search of flat premises. He met broker by name Amit who showed a room in building which was under construction and under the scheme of Slum Rehabilitation Authority (`SRA') at Babrekar Nagar, Charkop,

Kandivali, Mumbai. He agreed to purchase one room for consideration of Rs.21 lakh including stamp duty of Rs.45,000/-. The broker Amit showed two other persons namely Sanjay Chavan and Arun More under the pretext that they are conducting the business of sale and purchase of flats. On 14th September 2014, the complainant handed over cheque of Rs.10 lakh to Sanjay Chavan. Thereafter on 18th October 2014, Sanjay Chavan was asked to collect cheque of Rs.3 lakh by the complainant with a request that he should come with the original owner of the premises. The complainant was taken to the office of one advocate namely Rajesh who gave assurances. Sanjay Chavan made telephonic contact with one Pravin Thakur who also assured that while making payment of the balance amount, the owner will remain present along with all the documents. The complainant thereafter learnt that Pravin thakur is working in the office of developer. It is further alleged that on 5th November 2014, the applicant was introduced to the complainant. The document was prepared by Advocate Rajesh along with affidavit and power of attorney. The complainant paid Rs.10 lakh, which was handed over in the presence of applicant. Pravin Thakur handed over four documents which were in the name of Rajesh Khatavkar. The complainant parted with the entire consideration to accused who failed to bring the owner of the premises and/or handed over the possession of the promised flat premises. In the meantime, Pravin Thakur issued cheque of Rs.50,000/- which was dishonoured when deposited by the complainant. Thereafter the FIR was registered. During the course of investigation, statements of various persons were recorded. The documents were recovered and charge sheet has been filed against arrested accused.

3. Learned counsel for applicant submitted that the applicant is falsely implicated in the said case. It is submitted that the FIR was registered on the basis of statement of complainant which was recorded on 23rd May 2017. However, prior to that, the statement of complainant was recorded on 11th March 2016 in which he has not attributed any overt act to the present applicant. It is submitted that role of making representations and accepting amounts are attributed to other accused. It is submitted that the co-accused Pravin Thakur was involved in the case of alleged murder of Sanjay Chavan and he has been arrested and he is in custody. Pursuant to that, the complainant has changed his stand and it implicated the applicant as the person to whom the amount was parted are not available. It is submitted that the co-accused has been arrested and the charge sheet has been filed against him. There is nothing to be lawfully recovered from the applicant. The amount was allegedly given to the co-accused and not to the applicant. The entire matter relates to the documents and custodial interrogation of the applicant is not necessary. It is further submitted that the applicant's company had taken up the SRA project for redevelopment at Babrekar Nagar, Charkop, Kandivali, Mumbai in the year 2004 and thereafter in 2011 they have entered upon a joint development agreement with M/s.Gauri Constructions and thereupon entire work of construction was to be carried out by the said new developer. It is submitted that in 2012, the staff of Lakdawala Developers had handed over the site office to M/s.Gauri Constructions and the staff of Lakdawala Developers had moved out of the said site and building is being constructed by the said M/s.Gauri Constructions. It is submitted that the construction was completed and possession was handed over to

about 317 tenants in the year 2015. Thus, the applicant was not concerned with the said construction and question of applicant giving any promises or assuring the complainant or any other person about availability of the flat premises, does not arise. It is submitted that involvement of the applicant was not disclosed on the earlier occasion when complainant's statement was recorded on 11th March 2016. The implication of the applicant in the subsequent statement is, therefore, after thought and based on concocted version of the complainant. It is submitted that the alleged documents in the nature of memorandum of understanding and other documents were executed with the co-accused and not with present applicant. The applicant cannot be attributed the charge of forgery or cheating, as alleged in the FIR.

4. Per contra, learned APP has opposed the application for seeking relief u/s 438 of Code of Criminal Procedure, 1973. It is submitted that there is ample evidence to connect the applicant in the said offence. It is submitted that during the course of investigation, statements of various persons/witnesses were recorded which disclose the complicity of applicant in the said crime. It is submitted that the transactions were executed in the office premises of applicant and even in the presence of the applicant and he cannot plead ignorance with regards to the said transactions. Learned APP drew my attention to the statements of witnesses who are victims of false promises made by the accused. It is submitted that the said statements clearly indicate that the documents were executed and the promises were made in the presence of applicant, which shows involvement of the applicant in the crime. It is submitted that the applicant was concerned with Lakdawala Constructions, who was

supposed to develop the building. The co-accused who had made promises and who had introduced the complainant and other persons, were the staff of present applicant and, therefore, custodial interrogation of the applicant is necessary. It is submitted that during the course of investigation the investigating officer has recovered documents which were purported to be signed by Lakdawala Constructions. It is submitted that considering the evidence collected during the course of investigation, the relief prayed by the applicant may not be granted. The original complainant has also preferred an application for intervention to oppose the grant of anticipatory bail to the applicant. The complainant has relied upon allotment letter issued by Lakdawala Developers Private Limited to one of the aggrieved person stating that he is being allotted a residential premises situated at Babrekar Nagar, Charkop Industrial Estate in Parishram SRA Co-operative Housing Society.

5. I have perused the documents on record. In the FIR, the complainant has stated that he was in need of premises and had, therefore, approached the broker Amit and several other persons. The complainant has also mentioned that he has parted with huge amount of Rs.21 lakh to the accused. He has also stated that on 5th November 2014, he had visited the site office of developer and at that time the applicant and others were present in the said office. He also stated that he parted Rs.10 lakh to the accused at that point of time. It is further stated that subsequently it is learnt that Pravin Thakur who had also collected the amount from the complainant and made false promises, was involved in the murder of Sanjay Chavan, who was also party to various representations made along with other

accused. The complainant has also stated that there are seven other persons who were also introduced to part with amount and who were cheated by the accused. The names of said persons are also reflected in the FIR. It is true that prior to that, on 11th March 2016, the statement of complainant was recorded by police in which there is no specific reference of the applicant. However, in the FIR, the overt act has been attributed to the applicant. Learned advocate for applicant had, therefore, submitted that involvement of the applicant is after thought. However, it can be seen that there are various other statements recorded during the course of investigation by police. The statement of one of the victim namely Yeshwant Panchal was recorded on 3rd August 2016. In his statement it is stated by him that he had parted about Rs.23.70 lakh by cheque and in cash to Pravin Thakur. He has also stated that he visited the office of Lakdawala Developers on 27th July 2014 along with other persons where Pravin Thakur and others were present in the office. He has also referred to the execution of memorandum of understanding. He has also stated that the allotment letter in the name of Lakdawala Developers was issued to him. His subsequent statement dated 27th November 2017 refers to several documents executed and handed over to him. In the list of documents, there is a reference of the allotment letter issued by Lakdawala Developers Private Limited which is purported to have been signed by the Director concerned. The statement of Smt.Kavita Trivedi also refers to the representations made by the co-accused Pravin Thakur and others and issuance of allotment letter to her. She has parted with Rs.27 lakhs. In her subsequent statement, she has referred to the documents executed by her and in nature of agreement for sale, power of attorney, affidavit etc as well as allotment letter purportedly signed by the Director of Lakdawala

Developers Private Limited. Similarly, the statement of Pramod Shinde also refers to the false representations made by the accused and the visit to the office of Lakdawala Developers. He has stated that the amount was handed over to Pradip Thakur in the office of Lakdawala Developers in cash and by cheque and at that time he was assured by Pravin Thakur and Lakdawala Developers that premises will be allotted to him at the earliest. He also referred to the agreement and other documents executed with him. Similar is the statement of one Nandkishor Rane who has also referred to representations made to him and his visit to the office of Lakdawala Developers wherein the applicant was present and false assurances were made to him. He has also referred to the execution of allotment letter alleged to have been signed by the Director of Lakdawala Developers.

6. Thus, assuming that complainant in his initial statement has not referred to the presence of applicant herein, however, the FIR and the other statements which are referred to hereinabove, show that the applicant was a party to the said transactions and thus, he cannot claim ignorance to the said facts. In the circumstances, I find that there is prima facie evidence against the applicant to indicate his involvement. From the documents on record it is apparent that several persons were prompted to make payments and huge amounts in the sum of Rs.1,78,70,000/- was recovered. The said co-accused were working with Lakdawala Developers/Lakdawala Developers Private Limited.

7. It is not necessary at this stage to scan entire record. However, the statements as referred to hereinabove, are sufficient to show the

involvement of the applicant and thus custodial interrogation of the applicant is necessary. For the reasons stated above, the application is required to be rejected.

8. Hence, I pass following order :

ORDER

(i) Criminal Anticipatory Bail Application No.952 of 1998 is rejected.

9. At this stage learned counsel for applicant submits that interim protection was granted in the favour of applicant since 12th May 2018 and he may be granted three weeks time to surrender before the Investigating Officer. In the circumstances, request is accepted. The applicant is permitted to surrender before the Investigating Officer of Charkop Police Station, Mumbai before 1st October 2018.

(PRAKASH D. NAIK, J.)

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