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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1263 OF 2017

Deodatta Bhagwat More ..**Applicant**

Vs

The State of Maharashtra & Anr. ..**Respondents**

Mr. Suresh K. Bhise for applicant.
Ms. A.A. Takakalkar, APP for State.
Mr. Santosh B. Shete, A.P.I., E.OW., New Mumbai present.

CORAM : A.S.GADKARI, J.

DATE : 13th FEBRUARY 2018.

P.C.:

1] This is an application under Section 438 of Cr. P.C. for pre-arrest bail in CR No. 168 of 2017 dated 20.4.2017 registered with Vashi Police Station, Navi Mumbai under Sections 420, 406, 465, 467, 468, 471, r/w 34 of the Indian Penal Code.

2] Heard the learned Counsel for the applicant and the learned APP. Perused the record of investigation.

3] The first information report is lodged by Shri Rajkumar A. Agrawal. It is the prosecution case that, the applicant along with other two accused persons namely Avinash Deshmukh and Sachin Shevale represented the first informant that they are the partners of Tirumala Properties Co. and are in the business of sale and purchase of land. The applicant alongwith other accused person further represented the first informant that the land admeasuring about 350 ares lying and situated at village Wahal, Taluka Panvel, District-Raigad is owned by the legal heirs of Nizam of Hyderabad and the said land has been sold by them to their Company namely Tirumala Properties Co. The applicant along with other accused persons also represented the first informant that there are about 21 legal heirs whose names have been entered into the 7/12 extract of Revenue Record. That the applicant and co-accused have agreed to purchase the said land for Rs.350 Crores. The applicant further showed the agreement for sale entered into between the alleged legal heirs of Nizam of Hyderabad and partners of Tirumala Properties towards purchase of the said land for Rs.350 Crores. It was further represented that the applicant and other accused paid Rs.4.00 Crores to the said legal heirs of Nizam of Hyderabad. The first informant therefore decided to purchase the said land of Rs.350 Crores. The first informant thereafter from time to time paid a sum of Rs.2.71 Crores to the said Company of the applicant and the alleged legal heirs of Nizam of Hyderabad. That a further sum of Rs.2.30 Crores has been paid to the firm of the applicant by the informant. It is stated that a total sum of rupees five crores and one lakh has been paid to the applicant and his partners. It is the specific allegation against the applicant that, despite receipt of payment, the applicant did not hand over the possession of the said property to the first informant nor returned the amount accepted by them. It is further stated that, on 20.4.2012 as the applicant and his firm could not repay the said amount, the applicant as a security, gave/pledged a residential plot of land admeasuring about 60 ares with the first informant which was lying and situated at Kondhwa Khurd, Pune. The first informant subsequently received an information that the said property has already been attached by the Anti-Corruption Bureau in a crime registered against the applicant. The first informant further realized that the alleged legal heirs of Nizam which were shown by the applicant as the owners were bogus persons and a separate crime bearing No.61 of 2011 has already been registered with the NRI Police Station, Navi Mumbai against the applicant and his partners. It is alleged that, the applicant and his partners of Tirumala Properties Co. by making false representation on the basis of bogus and forged documents represented the first informant that they are the owners of Rs.350 acres of land and induced the first informant to part with the aforestated huge amount of Rs.5,01,00,000/- and has committed the present crime.

4] The learned Counsel for the applicant submitted that, as a matter of fact the persons in whose names the amounts are accepted are the real legal heirs of Nizam of Hyderabad. That a heir-ship certificate in that behalf has been granted by the Court of competent jurisdiction at Pavel i.e. the Joint Civil Judge, Junior Division Panvel at Panvel. He submitted that, it is the first informant who failed to comply with his part of obligation and therefore the transaction of sale of land could not be completed. He submitted that, arbitration proceedings have also been initiated by the first informant. That the present crime is registered out of a civil transaction and therefore the custodial interrogation of the application is not necessary. He submitted that there are documents on record to show that the applicant never made misrepresentation to the first informant and the transaction in the present crime is bonafide and genuine and prayed that the applicant therefore be granted pre-arrest bail.

5] Per contra, the learned APP on instructions submitted that the applicant is a Government servant and employed as a Constable with Maharashtra Police. She further submitted that that the applicant is an accused in CR No.3392 of 2010 filed under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act with Yerwada Police Station. She submitted that the alleged documents thereby making the representation that the persons named in the heir-ship certificate are the legal heirs of Nizam of Hyderdabad is a separate crime bearing No.61 of 2011 registered with NRI Police Station, Navi Mumbai. She submitted that, the documents prepared by the applicant thereby making false representation to the first informant are yet to be recovered and same is not possible without there being custodial interrogation of the applicant. The learned APP on instructions from Mr. Santosh B. Shete, A.P.I., E.O.W., Navi Mumbai, categorically made a statement that, the applicant is a Police Constable employed with the Maharashtra Police and despite the said fact has entered into a partnership in the aforesated firm and has indulged into the present crime and prayed that the present application may be rejected.

6] The first information report itself is self-eloquent about the participation of the applicant in the present crime. That the applicant along with other accused persons induced the first informant to part with aforestated huge amount and subsequently defalcated the same. The record further indicates that, when the first informant demanded his money back, it is the applicant who offered 60 ares of land towards security of repayment of the amount accepted by him which is lying and situated at Kondhwa Khurd, Pune. It is further revealed that the said property is already attached by the Anti-Corruption Bureau in a separate crime registered against the applicant. The record clearly indicates the role played by the applicant and his apparent complicity in the present crime and therefore this Court is of the view that the applicant does not deserve to be protected by pre-arrest bail.

7] It is further surprising to note here that, though the applicant is a Government servant employed with the Maharashtra Police, has entered in a partnership with said Tirumala Properties Co. and has brazenly indulged in inducing the first informant to part with huge amount. Indubitably this is a serious offence and the concerned highest authority from the Home Department, Government of Maharashtra has to look into it. As noted earlier, the learned APP on instructions from the Investigating Officer has made a categorical statement that the applicant is employed as a Constable with Maharashtra State Police which comes under the jurisdiction of Home Department, Government of Maharashtra and the applicant has not only accepted the partnership with the said firm, but has also indulged into aforestated offences which are serious in nature.

In view of the above, the Secretary, Home Department, Government of Maharashtra is hereby directed to look into the matter personally and to take remedial measures in that behalf.

8] This leads me to deal with another aspect of the matter. The applicant in the cause title of the present application and in the verification clause, at page No.12 of the present application, has mentioned his occupation as "Business". That the applicant in his additional affidavit dated 3rd October 2017 has further stated his occupation as "Business". Thus the applicant has made blatantly false statement on oath before this Court and has filed mis-leading affidavit and did not disclose true and correct facts to this Court, which indubitably attracts the provisions of Section 340 read with 195(1)(b) of Cr. P.C.

Thus prima facie it appears that the applicant has further committed an offence as contemplated under Section 193, 196, 199 and 200 of the Indian Penal Code

In view of the above, the Registrar (Judicial-II) of this Court is hereby directed to draw and make appropriate complaint before the learned Metropolitan Magistrate having jurisdiction for offences mentioned in Section 195(1)(b) of Cr. P.C.

9] The learned Metropolitan Magistrate to proceed further in the matter in accordance with law uninfluenced by the observations made by this Court in para No.8 above.

10] In view of the above and after taking into consideration the serious allegations against the applicant and the gravity of offence, this Court is of the considered opinion that the applicant does not deserve to be protected by pre-arrest bail.

Application is accordingly rejected.

11] The learned APP is directed to communicate this Order to the Secretary, Home Department, Government of Maharashtra and to the Registrar (Judicial-II) of this Court by hand delivery and to obtain acknowledgement in that behalf.

(A.S.GADKARI, J.)