IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1674 OF 2018

Chetan Narendra Dhakan … Applicant
Vs.
State of Maharashtra … Respondent
…
Mr. Ashok M. Saraogi for the applicant.
Mr. Prashant Pandey for the intervenor.
Mr. A.R. Kapadnis, APP for the Respondent-State.
…

CORAM : PRAKASH D. NAIK, J.
DATE : 18th SEPTEMBER, 2018.

P.C.

1. This is an application for anticipatory bail in connection with C.R. No. 43 of 2018 registered with Amboli Police Station for offence punishable under Section 420, 406 read with 34 of Indian Penal Code.

2. The prosecution case is that the complaint was lodged by one Sattar Modi on 19th January, 2018. The complainant is a friend and relative of Safir Suleman Sayyed who is settled in America. On 31st March, 2015 Mr. Safir Suleman Sayyed had informed complainant by telephone call that he had discussions with Director of Vinamra Developers Mr. Harshad Soni, Amrish

Soni and Chetan Dhakan. Their company is constructing building Shanti Gold and he is interested in purchasing the flat. The complainant was also informed that he should approach his mother-in-law Yasmin Ben residing at Andheri and collect key from her. He was requested to visit flat at J.P.Road above Hotel Garden Court and hand over articles lying therein to Mr. Harshad Soni. The complainant called his close friend Rajesh Bhatia and informed him about the aforesaid conversation. The complainant then contacted Yasmin Ben and collected key from her. The complainant and Mr. Bhatia then proceeded to the said building and waited below the building. Complainant contacted Safir Suleman Sayyed on phone who informed him that Gold lying in the flat would be collected by Harshad Soni who would come with weighing scale. The gold be handed over to him after weighing the same. Safir Suleman Sayyed also gave telephone number of Harshad Soni to the complainant. At about 10.30 p.m four persons had come by car. One of them was female. One amongst them called complainant by his name and disclosed his identity as Harshad Soni. To verify his identity, complainant gave call on the number provided by Safir which was picked up by Mr. Soni. He introduced other persons accompanying him as Geeta Soni (his wife) and Amrish Soni and Chetan Dhakan. Thereafter all of them visited flat No.402 situated on 4th floor of building named Sarkar, which flat was owned by Safir. After reaching the flat, the complainant took-out the bag kept in cupboard and removed gold from the bag which was weighed and found to be more than 8 kgs. Harshad Soni and Safir had discussion about the value of the gold. Complainant was told to hand over gold to Mr. Soni. The value was fixed to be Rs. 2 crores. Complainant was also informed by Harshad Soni that he had discussion about the transaction with Safir and that he would send documents of transaction within two to three days to Safir by e-mail. Thereafter, all of them left the place. Thereafter MOU in respect of flat No. 301 and 302 of Shanti Gold building was prepared by Harshad Soni, Amrish Soni and Chetan Dhakan with allotment letter prepared on the letter head of Vinamra Developers signed by them with stamp of company. Thereafter, the said MOU was notorised and also scanned and sent to Safir Suleman Sayyed at America by email through g-mail account of Vinamra Developers. The MOU and allotment letter were dated 1st April, 2015. Thereafter, accused informed that they would prepare the original documents within 15 days and sent it to Safir Suleman Sayyed through courier and he would be called for registration of documents. However, the accused did not send the documents and did not hand over the possession of the said flats to Safir nor the amount was returned. Hence, FIR was lodged on 9th January, 2018.

3. Applicant preferred an application for anticipatory bail before the Sessions Court which was rejected on 16th August, 2018.

4. Learned counsel for the applicant submitted that applicant has been falsely implicated in this case. Applicant has not received any gold. Allegations that gold weighing about 8 kg was handed over to the accused are concocted. The transactions is of civil nature. The applicant is not concerned with the deal. As per FIR, gold was to be handed over to Mr. Soni and it was allegedly delivered to him. The document was sent by the employee of the said firm Mr. Yogesh Shriyan by taking advantage of the fact that it was kept with him. He scanned and sent it to Safir via e-mail. On the basis of scanned documents which have been illegally forwarded via e-mail by employee of applicant, the complainant has now suddenly concocted the story and lodged FIR. Having found that the said persons in collusion with employee of the firm have played fraud and attempting to extort money, complaints are

lodged against them. Since police have not taken action on the said complaint private complaint is filed before Court of Metropolitan Magistrate. It is further submitted that notice was published in newspaper on 28th June, 2018 by claimants making statements which are defamatory. Hence, suit for defamation was filed in which interim injunction was granted restraining said persons from causing damage to reputation. It is further submitted that firm has also filed the suit seeking declaration that claimants have no rights in respect of the said flats. Complaints are also forwarded to Income Tax Authorities. The custodial interrogation of the applicant is not necessary. At no point of time, such transaction had ever taken place. The document was prepared as the purchaser was expected to visit Mumbai. The document was sent by employee. It is submitted that applicant has co-operated with the investigation. It is also submitted that prior to the registration of the First Information Report, the applicant and others were summoned by the police and applicant had attended the police station wherein no grievance was made by the complainant against the applicant and statement in that regard was recorded. It is further submitted that entire matter relates to the document and custodial interrogation of the applicant is not necessary. It is submitted that in the other case as per the directions of this Court, the amount has been deposited in this Court. It is submitted that the claim in respect to the said flat is subject matter of the civil proceeding which are pending in the Court. It is further submitted that applicant would not part with the possession of the said premises to any third person for whatever period this Court may direct.

5. Learned APP submitted that applicant was present alongwith other accused while gold was handed over to them on 31st March, 2015. It is further submitted another offence is registered against the applicant and other vide C.R. No. 6 of 2018 with the same police station. It is further submitted that although the gold weighing more than 8 kg was accepted, the possession of the premises was not handed over to Safir Suleman Sayyed. Allotment letter cannot be issued unless consideration is received. There is mention of payment for booking flat in allotment letter. The memorandum of understanding was signed by the applicant and others which was stamped and notorised and the same was not signed by Safir Suleman Sayyed.

6. Learned counsel for the intervenor also supported the submission of the learned APP. It is submitted that construction is

not completed and only two floors of the said building were constructed. The fact that allotment letter itself indicate that accused has received the consideration. Applicant was present alongwith other accused when the gold was handed over by the complainant. It is submitted that civil proceeding and private complaint is filed for creating defence. Two different allotment letters were issued by accused. The other allotment letter relates to Flat No. 401 and 402. The accused are involved in a similar offence wherein allotment letter was issued to the said complainant.

7. Having heard both sides, I have also gone through the documents on record. From the First Information Report, it is apparent that applicant was allegedly present alongwith other accused on 31st March, 2015 when the gold was allegedly handed over to them. MOU which is subject matter of the deal was signed by the applicant and allotment letter was also signed by the applicant. Learned APP submitted that it is true that prior to registration of FIR, the applicant and others were called for enquiry. However, the said summons was issued in 2017 and FIR was registered subsequently. It is submitted that investigation is going on and in pursuant to the FIR complicity of the applicant is

disclosed in crime. The applicant was not absolved in crime. It is the case of the prosecution that gold of two crores was given by the complainant to the applicant and others. The allotment letter indicate that sum of 2 crores is received by way of payment to book flats No. 301 and 302. Possession of the flat is not given. Similar offence is registered against the applicant and others. MOU dated 1st April, 2015 stated that party of first part is approached party of second part to advance sum of Rs. 2 crores as finance. It is also stated that sum of Rs. 2 crores has been paid by way of finance. The said MOU was signed by the accused and notorised. There is an endorsement made by the notary that party of first part had signed the said document before him. The MOU also refers to receipt of Rs. 2 crores. Prosecution also contends that one more allotment letter of the same date bearing with reference to flat No. 401 and 402 was issued showing that said flats were allotted to Safir Suleman Sayyed. The said fact is disputed by applicant. It is the contention of the applicant that Mr. Safir Sayyed and asked them to keep documents ready so as to enable him to sign the same. However, the question arises as to why the said document was notorised. The fact of two allotment letters of same date also created doubt about the conduct of accused. It is difficult to accept that the servant would illegally forward the document to Mr. Safir Sayyed. One more offence is registered under Section 406 and 420 of Indian Penal Code against applicant and others. The proceedings were initiated at the instance of accused subsequently. In CR No. 6 of 2018, this Court granted anticipatory bail on depositing the amount in this Court.

8. Taking into considerations aforesaid circumstances, no case for grant of anticipatory bail is made out. Application stands rejected.

Sachidanand Kuttan Nair
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Date: 2018.09.25 11:49:39 +0530

(PRAKASH D. NAIK, J.)