

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1800 OF 2018

Ashfak Gulam Pandey @ Raju

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms. Priyanka Kripashankar Dubey for the applicant.

Mrs.Geeta Mulekar, APP for the respondent/State.

CORAM : PRAKASH D. NAIK, J.

DATE : 7th SEPTEMBER 2018

P.C. :

1. This is an application for anticipatory bail. The applicant is apprehending arrest in connection with CR No.51 of 2018 registered with Dongri Police Station for the offences punishable under Section 420 read with Section 34 of the Indian Penal Code.

2. The prosecution case is that the informant had approached the co-accused Rizwan Nazir for purchase of flat premises. The Co-accused had represented that the premises will be sold to him for total consideration of 45 lakhs. The informant gave Rs.20

lakhs in cash and the agreement incorporating terms of contract were executed between them. The informant thereafter paid an amount of Rs.14 lakhs in cash to the accused. After completion of bidding the informant requested the co-accused to complete the transaction by handing over possession of the premises. However, it was learnt that all rooms in the constructed building were occupied by some other persons. The co-accused thereafter represented that he would develop another building viz. Good Luck Mansion, in that building flat will be provide to the informant. The informant was further induced to part with payment of Rs.1 lakh. However, the promises were not fulfilled. The investigation revealed that the applicant and the co-accused Shahid Nazir agreed to develop Good Luck Mansion under the establishment of the applicant viz. Al-Neha builders and developers. The case of the prosecution is that an amount of Rs.10 lakhs were paid to the applicant. However, promises were not fulfilled. The co-accused Rizwan was arrested and he has been granted bail.

3. The learned Advocate for the applicant submitted that the primary role of making false representation is made against the co-accused and not against the applicant. The amount was parted to the other accused. Alleged promises were made by the accused, who is already granted bail. Chargesheet has been filed against arrested accused. It is submitted that the applicant has not

received any amount from any person by cheque or cash. Chargesheet is self explanatory to the effect that the entire amount of 2 crores and 17 lakhs is received by accused no.1. Evidence is documentary in nature. Custodial interrogation of the applicant is not necessary. The applicant himself has forwarded complaint on 24th March, 2017 to the police station against Sayed Rizwan Mir stating that accused no.1 had committed an offence of cheating the innocent persons. The applicant had also filed N.C. complaint against Sayyed Mehboob who is one of the buyers of the property. It is also submitted that the applicant is suffering from heart ailment. Considering the aforesaid circumstances, it is prayed that the bail may be granted to the applicant.

4. Learned APP submitted that there is sufficient evidence against the applicant. False representations were also made by the applicant. The purchaser of the flat were duped by all the accused by acting in connivance with each other. Learned APP relied upon several documents in support of her submission. It is submitted that the applicant had executed MOU with Al-Neha Builders and Developers which is a partnership firm. The applicant had represented that he would develop property being Good Luck Mansion. It is submitted that the co-accused has been granted bail after he was arrested and subjected to custody.

5. On perusal of the documents on record, it can be seen that

FIR was registered on 14th March, 2018 against all accused. In the FIR, it is alleged that the amount was given to the accused. It is also stated that accused no.1 and his partner (applicant) had disappeared after accepting money. The FIR mentions the details of the persons from whom the amount was accepted. On perusal of the statement of Sayed Ali Asger dated 1st April, 2018, it is apparent that the said witness had handed over the amount of Rs.10 lakhs in cash to the accused and in the presence of the other accused persons the said amount was handed over to the applicant. However, the witnesses noticed that there was no development in relation to Good Luck Mansion therefore he persuaded his demand with the applicant. He further stated that the applicant had prepared an agreement which is signed by him alongwith Shahid Mir as partner of Al-Mansion Builders and Developers. On perusal of statement of Salim Ahmed Husain dated 28th March 2018, it can be seen that there was representation of development of Good Luck Mansion. He has referred to the execution of agreement of development dated 13th July, 2016 assigning development right to M/s. Al-Neha Builders and Developers for which the applicant is the partner. The applicant had preferred an application for anticipatory bail before the Sessions Court which was rejected on 2nd April, 2018. Thereafter, the applicant was not available for investigation and chargesheet was filed against co-accused. The applicant preferred anticipatory bail application which was rejected on 30th August,

2018. Taking into consideration the nature of evidence which is referred to hereinabove, no case for grant of anticipatory bail is made out. The application is therefore required to be rejected. Hence the order;

:: ORDER ::

Vina
Arvind
Khadpe

Digitally
signed by
Vina Arvind
Khadpe
Date:
2018.09.11
13:04:55
+0530

Criminal Anticipatory Bail Application is rejected.

[PRAKASH D. NAIK, J.]