IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1854 OF 2018

Narendra Hariprasad Agarwal … Applicant
Vs.
The State of Maharashtra … Respondent

WITH
CRIMINAL APPLICATION NO. 1212 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 1854 OF 2018

Panchadev Ramdular Patel … Intervenor/ Applicant

In the matter between

Narendra Hariprasad Agarwal … Applicant
Vs.
The State of Maharashtra … Respondent

…

Mr. P.S.Gole for applicant.
Mr. Arfan Sait, APP for the Respondent-State.
Mr. Virendra Pethe for the intervenor

…

CORAM : PRAKASH D. NAIK, J.
DATE : 15th OCTOBER, 2018.

P.C.

1. This is an application for anticipatory bail in connection with C.R. No. 63 of 2017 registered with Kashimira Police Station, District Thane for offences under Sections 420, 465, 467, 468, 471 of Indian Penal Code. The FIR was registered on 3rd July, 2018.

2. The prosecution case is that on 7th December, 2009 partnership deed was executed between the applicant, Meghaji

Bhanushali and the complainant which was named and styled as M/s NMP Developers. The main object of the partnership is to engage in the business of sale and purchase of landed property. The complainant had 50% share in the said firm, whereas the other two partners were holding share of 25% each. In the year 2010, the firm had purchased a landed property, situated at Village Mahajanwadi, within the local limits of MBMC bearing its Survey No. 127, H.No.11, admeasuring at about 380 Sq. Mtrs. Survey No. 127-H.No.12 admeasuring at about 1570 Sq. Mtrs., Survey No.127, H.No.19 admeasuring at about 300 Sq. Mtrs. and Survey No. 127, H.No.16 admeasuring at about 1520 Sq. Mtrs. from original owners and accordingly conveyance deed was executed. The names of all the three partners were reflected on 7/12 extract of the said property. Since, the complainant was holding 50% share in the property, he had disclosed his intention to part his share in the property for the purpose of development to Shri Punit Lalpatrai Dhaval. In pursuant to that an agreement was executed between the complainant and Punit Dhaval on 1st September, 2011. Since there was no approach road, the complainant was engaged in obtaining requisite permissions with regards to the development of the said property. In April, 2016, the complainant learnt that the aforesaid property was sold by the other partners Shri Narendra Agarwal (applicant) and Mr. Meghji Bhanushali without permission and knowledge of the complainant. The property was sold to third person viz. M/s Pooja Builders. The said persons had executed the agreement with M/s Pooja Developers in the year 2012. They had also executed irrevocable power of attorney in favour of the said developer. It was also noticed that they had executed a conveyance deed in relation to the property on 28th May, 2014. They also executed the irrevocable power of attorney dated 28th May, 2014. It is further alleged that in the conveyance deed it was mentioned that vide retirement deed dated 1st November, 2012, the complainant has relinquished all his rights in the said property in favour of the other partners i.e the applicant and Meghji Bhanushali. It was also stated that the complainant vide power of attorney dated 1st November, 2012 had given rights to develop and sell the said property in favour of the applicant and Meghji Bhanushali. It is further alleged that the complainant has not given any release deed or power of attorney to deal with the said property to any person. The documents are not signed by the complainant and thus, the signature of the complainant are forged by creating a fabricated documents. Punit Dhaval has filed a suit against NMP Builders and Pooja Builders. In the said suit M/s Pooja Builders have a filed the development agreement executed between the parties alongwith power of attorney conveyance deed, release deed and retirement deed showing that the complainant and Meghji Bhanushali had retired from the partnership firm. It was further alleged that the complainant and Meghji Bhanushali have purportedly retired on 6th May, 2011 and if that is accepted, there was no reason for Meghji Bhanushali to execute document with Pooja Developers dated 28th December, 2012. It was also not necessary to execute a separate release deed dated 1st November, 2012. Hence, the document dated 6th May, 2011 has been fraudulently prepared by the applicant. It is further alleged that Meghji Bhanushali had filed an affidavit in the Court in the suit filed by the Punit Dhaval stating that he has not executed release deed dated 6th May, 2011. Thus, it is alleged that false and fabricated documents were prepared by the applicant.

3. Applicant preferred an application for anticipatory bail before the Court of Sessions at Thane. The said application was rejected by the Sessions Court vide order dated 5th September, 2018.

4. Learned advocate for the applicant submitted that false and frivolous FIR has been lodged against the applicant. There is gross delay in filing the First Information Report. The FIR was lodged on 3rd July, 2018. As per the First Information Report, the complainant came to know about the alleged transaction in April, 2016. Thus, the FIR was lodged merely two years after the knowledge of the executing of the documents by the applicant with M/s Pooja Builders. The transaction is vide Registered Deed executed in the year 2012 and registration of document is noticed to the public at large. It is therefore submitted that there is enormous delay which is unexplained by the complainant in lodging the FIR. The learned counsel placed reliance on the several documents in support of submission such as deed of retirement dated 6th May, 2011, registered agreement dated 28th August, 2012, affidavit/declaration, deed of conveyance dated 28th May, 2014, power of attorney dated 28th August, 2012. It is submitted that the complainant had retired from the partnership firm and had relinquished his rights in relation to the partnership property by accepting the amount of Rs.25 Lakhs. It is submitted that the complainant had received an amount of Rs.22 Lakhs by way of cheque and Rs. 3 Lakhs by way of cash. It is submitted that the

complainant had executed a deed of retirement cum induction of new partner on 6th May, 2011 and as per the said retirement deed the complainant had released all rights in the properties of the partnership firm and as such he has received all dues payable by the partnership firm and hence the complainant has no existing rights in respect of property of firm. The agreement for sale as well as conveyance deed is a registered document by and between two partnership firm. The allegation of the complainant that the conveyance deed refers to retirement deed dated 1st November, 2012 is due to oversight and there is no such document executed. However, due to oversight the date is wrongly mentioned as 1st November, 2012 instead of 6th May, 2011. It is submitted that Punit Dhaval has filed a suit which is due for hearing and after realizing that the complainant who is defendant in the said suit has no defence and hence the First Information Report has been registered against the applicant belatedly. It is further submitted that the entire matter relates to documents and custodial interrogation of the applicant is not necessary.

5. Learned APP submitted that the applicant is involved in a serious offence. The applicant has fabricated documents to show that the complainant has retired from the partnership firm and has

relinquished his rights in the said firm. It is submitted that the documents relied upon by the applicant shows that the complainant as well as Meghji Bhanushali had retired from the partnership firm. However, there was no reason for Meghji Bhanushali to execute the documents in favour of M/s Pooja Builders and Developers. It is further submitted that the applicant is absconding. Learned APP pointed out the averments made in the present application wherein it is stated that the applicant is permanent resident of Mira Road however since various sites are going he is residing near the said sites and he is not absconding. It is submitted that the explanation is afterthought. It is submitted that the applicant has not produced original released deed. The property sold to Pooja Builders. There are two more cases registered against the applicant. It is submitted that considering the nature of the offence involving forgery is committed by the applicant accused, the custodial interrogation is necessary and hence, the application be rejected. Learned counsel for the informant had preferred application for intervention in the present application for anticipatory bail. The intervention is allowed. Learned counsel for the intervenor adopted the submissions advanced by learned APP. It is submitted that the intervenor had not signed the alleged document of deed of retirement relied upon by the applicant. It is submitted that the applicant has fabricated the document to show that the complainant has retired and relinquished his rights in favour of the partnership firm. It is submitted that the application be rejected.

6. Learned counsel for the applicant had also submitted that the payment made to the complainant on account of relinquishing his rights in the property of firm was fortified by the bank statements. The learned Sessions Judge while rejecting the application for anticipatory bail has observed that alleged released dated 6th May, 2011 wherein it is mentioned that first retired partner shall be entitled to sum of Rs.25 Lakhs and on 24th June, 2011 purported sum of Rs.2 Lakh is being paid to the informant and thereafter Rs.10 Lakhs were paid on 31st May, 2014 while Rs.10 Lakhs were paid on 3rd January, 2011. It is further observed that as per the purported agreement, it was future entitlement and amount paid on 3rd January, 2011 cannot be considered. Therefore, at the most the complainant has established that payment of Rs.12 Lakhs till date is being paid to the complainant. However, whether it was in pursuance to alleged retirement deed or not is a matter of debate. There is specific allegations of forgery

of documents.

7. The deed of retirement-cum-induction of new partner relied upon by the applicant was purportedly executed on 6th May, 2011. The said document was executed between the complainant, applicant and Meghji Bhanushali as well as the incoming partner M/s Tejas Enterprises. In the said document, Meghaji Bhanushali and the complainant were shown to be retiring partners and the applicant was referred as to continuing partner. Whereas one Fazal Chakrani being partner of M/s Tejas Enterprises was shown as incoming partner. The said documents further states that the retiring partners shall be entitled to a sum of Rs.25 Lakhs as their share in the said firm M/s NMP Developers which shall be paid to them by the continuing partner forthwith upon the execution of the said document. The agreement for sale-cum-development was executed on 28th August, 2012 between M/s NMP Developers and M/s Pooja Builders, a partnership firm represented by its partners. Said agreement has been annexed to this application. As per the agreement the owners therein have agreed to transfer, assign and convey all the development rights, title, interest and share in respect of the property admeasuring 50000 FSI approximately to the developers with clear and marketable title. There is no

reference of retirement deed of other partner in the said agreement. The agreement was signed on behalf of M/s NMP Developers through its authorised signatory/partners viz Narendra Agarwal (applicant) and Meghji Bhanushali. The 7/12 extract reflects the names of Narendra Agarwal, Meghji Bhanushali and Panchdeo Patel (complainant). Affidavit-cum-declaration dated 28th August, 2012 is also part of this application. Said affidavit-cum-declaration is signed by the applicant and Mr.Bhanushali declaring that they were in exclusive use, occupation and enjoyment of the properties admeasuring 50000 FSI approximately which were described in the said affidavit. The letter of possession dated 28th December, 2012 is also signed by the aforesaid persons on behalf of the M/s NMP Developers. The conveyance deed is purportedly executed on 28th May, 2014. The said deed makes reference to retirement deed dated 1st November, 2012. It is stated that vide aforesaid retirement deed, the complainant had retired from partnership firm of M/s NMP Developers, partnership firm being represented by three partners viz Mr. Narendra Agarwal (applicant), Mr. Meghji Bhanushali and the complainant. It is further stated that in pursuant to retirement deed dated 1st November, 2012, the said retiring partner i.e complainant had executed released deed dated 1st November, 2012 releasing all his rights, title, interest and shares in respect of the said properties in favour of Narendra Agarwal and Meghji Bhanushali, the continuing partners of M/s NMP Developers and having received full and final payment as per the release deed. The conveyance deed also makes a reference to irrevocable power of attorney dated 1st November, 2012 in favour of Mr. Narendra Agarwal, Meghji Purshottam Bhanushali as continuing partners of M/s NMP Developers conferring upon them several powers, *inter alia* powers to develop and sell the said properties purchased in the partnership firm M/s NMP Developers to the person or persons of their choice. The conveyance deed is also signed by the Narendra Agrawal and Meghji Bhanushali. Thus, the conveyance deed makes reference to the retirement deed dated 1st November, 2012 and the release deed dated 1st November, 2012. In paragraph 5(k) of this application, it is stated that the mention of retirement deed dated 1st November, 2012 on pages 4 and 5 of the conveyance deed is due to oversight and there is no such document executed, however, due to oversight the date is wrongly mentioned 1st November, 2012 instead of 6th May, 2011. It is also stated that applicant has already initiated the procedure for getting the deed of rectification. It is relevant to note that in the conveyance deed, it is mentioned that the complainant has released all his rights, title, interest in respect of the properties in favour of the applicant and Meghaji Bhanushali. Adverting to the deed of retirement dated 6th May, 2011, it is implicit that the complainant as well as Mr. Meghji Bhanushali had retired from the partnership firm. Thus, the averments in the conveyance deed are contrary to retirement deed dated 6th May, 2011, the questions which also falls for consideration is when Meghji Bhanushali had retired from the partnership firm vide retirement deed dated 6th May, 2011, how he could sign the agreement dated 28th August, 2012, affidavit-cum-declaration dated 28th August, 2012 and deed of conveyance dated 28th May, 2014. The conveyance deed gives an impression that the only partner who has retired from the partnership firm is the complainant. Thus, the transactions and the contentions of the applicant are suspicious. Taking into consideration the aforesaid circumstances and the investigation conducted by the police, no case for grant of anticipatory bail is made out. It is also noted that there are antecedents against the applicant. Taking into consideration the nature of role attributed to the applicant, custodial interrogation of the applicant is necessary, apart from that the applicant is not entitled for any relief under Section 438 of Code of Criminal Procedure. Hence, I pass the following

ORDER

i) Anticipatory Bail Application No. 1854 of 2018 stands rejected.

ii) Anticipatory Bail Application No. 1854 of 2018 as well as Criminal Application No. 1212 of 2018 stand disposed off.

(PRAKASH D. NAIK, J.)

Sachidanand Kuttan Nair Digitally signed by Sachidanand Kuttan Nair Date: 2018.11.14 16:50:28 +0530