

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2106 OF 2018

Sachin Dattaram Salve

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. M.S. Mohite I/by Mr. Sandeep Salunkhe for the applicant.

Mr. M.G. Patil, APP for the Respondent-State.

Mr. Shrikant P. Pawar, PSI Kasar Wadavali Police Station is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 19th OCTOBER, 2018.

P.C.

1. This is an application for anticipatory bail in connection with CR No. I-69 of 2014 registered with Kasar Wadavali Police Station Thane for the offence punishable under Sections 420, 464, 467, 468, 471 read with 34 of Indian Penal Code.
2. Applicant had preferred an application for anticipatory bail before the Court of Sessions which was rejected on 4th October, 2018.
3. Prosecution case is that informant purchased the land bearing survey No. 185, Hissa No. 5 admeasuring 1290 sq. meters situated at village Kolshet, Taluka and District Thane for

Rs.45,00,000/-. Informant paid the said amount to Narayan Ganpat Patil and others and accordingly sale-deed was executed by them in his favour on 16th July, 2011. Thus, informant had become the owner and possessor of the said property. Since the informant is not a farmer his name could not be entered into the record of rights of the said land in the revenue record. The accused took the undue advantage of the situation and executed another sale-deed dated 21st September, 2013. The said deed was executed without paying any consideration to that effect. The complainant filed a private complaint against the accused. By order dated 4th March, 2014, the concerned Court directed investigation under Section 156(3) of Code of Criminal Procedure. In pursuant to that FIR was registered on 10th March, 2014 for offence punishable under Sections 420, 464, 468, 467, 471 read with Section 34 of Indian Penal Code. The said offence was registered against ten other accused persons. The applicant was not impleaded as accused in the private complaint by the informant but in the FIR registered pursuant to the direction of the Court, the applicant was shown as one of the accused.

4. Learned counsel for the applicant submitted that dispute is purely of civil nature. Applicant is a bonafide purchaser.

Applicant had executed the sale-deed with the owners of the land including Narayan Patil since there was controversy with regards to the execution of two sale-deeds. The applicant had executed confirmation deed with Helicon Enterprises through its partner Vikas Halwe. Said deed was executed on 15th April, 2015 for a sum of Rs.50,00,000/-. It is submitted that consideration for execution of the confirmation deed was paid to the complainant by way of cheque as well as by cash. It is submitted that cheque to the tune of Rs.45,50,000/- and the balance amount was paid by cash. It is further submitted that First Information Report was lodged on 2015. On several occasions, the applicant had attended the Investigating officer as and when called and co-operated with the investigation. It is submitted that the statement of the account of the applicant clearly indicates that the amount which was paid to the complainant has been credited into the account of the said partnership firm. It is further submitted that investigation is going on since last three years and therefore the custodial interrogation of the applicant is not necessary.

5. Learned APP submitted that sale-deed was executed with the informant by Narayan Patil and others on 16th July, 2011. Subsequently Narayan Patil has executed another sale-deed in

respect of the said property on 21st September, 2013. It is submitted that there was no payment of consideration for an execution of the second sale-deed. It is further submitted that consideration stipulated in the confirmation deed on 15th April, 2015 is not encashed into the account of the complainant's firm. It is submitted that during the course of investigation, the statement of Vikas Halwe was recorded on 7th February, 2018 in which it is stated by him that he was threatened by the accused and he was under pressure. He has stated that confirmation deed was executed under coercion. Learned APP also relied upon on the statement of Narayan Ganpat Patil wherein he has stated that in 2011 the property was sold to the complainant's firm and the consideration was received. Thereafter his son-in-law was instrumental in executing the sale-deed dated 21st September, 2013. He has not received any consideration in that regard. It is further submitted that there is no substantial evidence to establish that the payment was made towards consideration while executing sale-deed dated 21st September, 2013 or confirmation deed dated 15th April, 2015. The cheque which was purportedly issued by the accused was not encashed into the account of the complainant. It is thus submitted that the applicant is involved in executing bogus

transactions and hence the application be rejected.

6. I have perused the documents on record. First sale-deed was executed on 16th July, 2011 between Narayan Patil and M/s Helicon Enterprises partnership firm through its partner Shri Vikas Halwe and Viral Bhanji Patel (informant). Narayan Patil and others were signatories to the said sale-deed. Second sale-deed was executed on 21st September, 2013 with the applicant by Narayan Ganpat Patil. The applicant has relied upon the confirmation deed dated 15th April, 2015 is defects to demand of consideration to the partnership firm. Said confirmation deed is executed through Vikas Halwe who was also signatory to the sale-deed dated 15th April, 2015. It is pertinent to note that private complaint of the informant before the appropriate court against Narayan Patil and others, the applicant was not impleaded as an accused. Investigation was directed under Section 156(3) of Code of Criminal Procedure on 4th March, 2014 and on 16th March, 2014, the FIR was registered in which the applicant was also shown accused No.11. The private complaint was filed against ten accused. It is not clear as to on what basis the applicant was impleaded as an accused in the FIR although, it was registered immediately after the directions of the Court under Section 156(3)

of Code of Criminal Procedure. It is pertinent to note that statement of Vikas Halwe was recorded on 7th February, 2018 wherein he has stated that the confirmation deed was executed under coercion. The said witnesses had not lodged any complaint in that regard although the confirmation deed was executed on 15th April, 2015. The case of the applicant is that payment towards the confirmation deed was executed on 15th April, 2015. Case of the applicant is that payment towards confirmation deed was made by cheques as the said fact is evident from the Bank Statement. The statement of Narayan Patil was recorded on 31st January, 2015. Learned counsel for the applicant had submitted that Narayan Patil had expired on 21st August, 2015 apparently there is overwriting in respect of the date of recording of Narayan Patil. Apart from that from statement of Narayan Patil it can be seen that he had not denied the execution of second sale-deed dated 21st September, 2013. He stated that said deal was executed by his son-in-law and no consideration was received in that regard. FIR was registered in 2014 and investigation is going on since last three years. Applicant was granted interim protection by the Sessions Court and he was directed to report to the Police Station and apparently he has reported the Investigating Officer.

Documents are in possession of the police. In the circumstances, case for grant of anticipatory bail is made out.

ORDER

- i) In the event of arrest of applicant in connection with CR No. I-69 of 2014 registered with Kasar Wadavali Police Station, applicant be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- ii) The applicant shall attend the investigation officer of the concerned Police Station once in a week on Friday between 10.00 a.m. to 12 noon till filling of chargesheet;
- iii) The applicant shall not tamper with the evidence and/or influence the prosecution witness;
- iv) Anticipatory Bail Application stands disposed of.

Sachidanand
Kuttan Nair

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.10.25
11:35:16 +0530

(PRAKASH D. NAIK, J.)