IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2844 OF 2018

Jitendra Tiwari @ Jitu
(At present in Thane Central Prison) .. Applicant
Vs.
State of Maharashtra .. Respondent

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Ms.Anjali Awasthi, Advocate for the Applicant.
Mr.S.R. Agarkar, APP for the Respondent – State.
Mr.R.R. Daundkar, PI Crime Branch, Thane, present.
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CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 30, 2018.

P.C. :

This is an application under Section 439 of Cr.P.C. in connection with C.R. No.I–88 of 2017. The offence was registered with Thane Nagar Police Station on 27th May, 2017, for the offences punishable under Sections 420, 467, 468, 471 and 120-B read with 34 of Indian Penal Code (“IPC”, for short). The applicant was arrested on 17th July, 2018.

2 The prosecution case is that the husband of the complainant's sister used to manage the property work which was owned by the complainant's grandfather. The relationship

between the complainant and the husband of the sister was not cordial. In January 2017, on account of financial constraints, complainant was desirous of selling the ancestral land after procuring requisite documents such as 7 x 12 extract in respect to the subject property. It was noticed that the name of the accused was appearing as owner in the column of ownership. After perusing requisite mutation entry and the registered agreement dated 17th September, 2008, he procured the copies of the said agreement. It is noticed that the co-accused had transferred the land in his name on the basis of the power of attorney. It was further noticed that there was agreement executing between his grandmother Janabai and the accused in 1985, although, she expired in 1975. Thus, false and fabricated documents were prepared by the accused and by impersonating the original owners, the property was transferred in their names.

3 After rejection of application for Anticipatory Bail, the applicant had surrendered before the Investigating Officer on 17th July, 2018. On completing investigation, charge – sheet has been filed.

4 Learned counsel for the applicant submitted that the applicant has not played any role in forgery of documents. He is

not beneficiary of the transaction. The agreement of transfer of property was executed by other accused. The principal accused has been granted bail. The applicant is in custody from the date of arrest and further detention is not required. Reliance is placed on the other orders passed in favour of the co-accused.

5 Learned APP submits that all the accused had indulged in bogus transactions. False and fabricated documents were prepared. Applicant had participated in the crime. He pointed out the statements of witnesses alleging that, the applicant and other accused had visited the house of the co-owners, for executing transactions. It is submitted that the evidence on record shows the involvement of the applicant. There are two cases registered against the applicant, one case pertains to the offence under Section 420 of IPC and the other case is registered under the Arms Act. It is submitted that applicant is not attending the trial Court in the case under the Arms Act. It is submitted that the crime is serious and the applicant cannot be granted bail.

6 I have perused the documents. According to the prosecution applicant is one of the person who acted in connivance with the other accused. However, primarily the

transaction is executed by the other accused. The documents by which the property was purportedly transferred to the co-accused were executed by other accused. It is pertinent to note that the co-accused Liyakat Shaikh has been granted bail by the Sessions Court, vide order dated 10th April, 2018. The Court has observed that no specific role was attributed to the accused, and, that the accused was in custody after his arrest and further detention is not necessary. It is also pertinent to note that while rejecting the application for bail filed by the applicant, the learned Sessions Judge had rejected the same primarily on the ground that on the basis of his previous conduct, there is likelihood of the applicant – accused absconding and the role attributed to him is distinct from others. I have perused the order of bail granted by the Sessions Court to Avinash Patil. The case of the prosecution against him is that he prepared title clearance certificate and sold the piece of land for the sum of Rs.2 crores and prepared forged documents with the help of the office of Sub-registrar. He was granted bail vide order dated 13th November, 2017. Charlie John Couthino was also granted bail by the Sessions Court on the ground that he was in custody and further detention is not necessary. The other accused, namely, Santosh Malankar, Sanjay Landge, Javed Ali Shaikh, Biren Mehta, Amit Phulpagar, Shailesh Jadhav, granted bail by the Sessions Court. The case against the applicants is that they had acted in connivance with the main accused.

7 I have also perused the Roznama in relation to the case under the Arms Act. Apparently, the applicant was not present on some dates before the Sessions Court, however, the last order indicate that he has been exempted and before them that also the advocate was represented him. It is not noticed that any warrant or proclamation is issued against him.

8 Learned APP also pointed out the order passed by this Court rejecting the application for anticipatory bail preferred by the other accused Liyakat Gufar Shaikh. As far as the present applicant is concerned, he has been arrested and since then he is in custody. Investigation is completed and charge – sheet has been filed. Taking into consideration the aforesaid circumstances, case for grant of bail is made out.

9 Hence, I pass the following order:

:: <u>O R D E R</u> ::

(i) Bail Application No.2844 of 2018, is allowed;

(ii) The applicant in connection with C.R. No. I- 88 of 2017, registered with Thane Nagar Police Station, he be released on bail on his furnishing P.R. Bond in the sum of Rs.30,000/-, with one or more sureties in the like amount;

(iii) The applicant shall report the investigating officer of ACP Detention–I once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon;

(iv) Applicant shall not tamper with the evidence and shall attend the trial Court regularly on the date of hearing regularly, unless exempted by the Court;

(v) Applicant is permitted to furnish cash security of Rs.30,000/-, in lieu of surety, for a period of four weeks;

(vi) Bail Application No.2844 of 2018, stands disposed of;

(vii) Parties to act on an authenticated copy of this order.

(**PRAKASH D. NAIK, J.)**