

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

ANTICIPATORY BAIL APPLICATION NO.1881 OF 2019

Rajjak Tajoddin Sayyad & Anr.

.... Applicants

Versus

The State of Maharashtra

.... Respondent

- Mr. V. V. Purwant, Advocate for Applicants.
- Mr. Prashant Jadhav, APP for the State/Respondent.
- Mr. R. G. Bhong, P.H. 665, Barshi Shahar Police Station present.

**CORAM : SARANG V. KOTWAL, J.
DATE : 28th AUGUT, 2019**

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.592/19 registered with Barshi City Police Station, under section 420 r/w. 34 of the Indian Penal Code.

2. The FIR is lodged on 01/08/2019 by one Anita Punmiya. She has stated that she wanted to purchase a house. She came to know that the present applicants owned house at Solapur road and they were planning to sell their house. The informant approached the applicants and it was agreed that the informant

would purchase the house for Rs.23 lakhs. It is her case that in all she has paid Rs.7,11,000/-. The agreement for sale was notarised on 24/04/2019. It is her case that the applicants had agreed to execute the sale deed within three months from that date. However, thereafter neither the sale deed was executed nor any amount was returned. On this basis the FIR is lodged.

3. Heard Shri. Purwant, learned counsel for the applicant and Shri. Jadhav, learned APP for the State.

4. Shri. Purwant submitted that before this FIR was lodged, the informant had approached the court of Judicial Magistrate, First Class at Barshi vide R.C.C.No.150/19 on the same allegations. In that complaint no specific prayer was made for investigation U/s.156(3) of the Cr.p.c. The learned Magistrate vide order dated 25/03/2019 had directed that the complaint be placed for verification on 20/05/2019. The complaint was filed on 25/03/2019 itself. Shri. Purwant stated that verification was ultimately recorded on 20/06/2019 and is pending for further orders. He further submitted that the applicant No.2 has already filed Civil suit bearing R.C.S.No.209/19 before Civil Judge,J.D.,

Barshi for the declaration that the first informant herein was not entitled to any dues from the applicant no.2. That suit was filed on 27/02/2019. Shri. Purwant is not in a position to make a statement as to whether summons of that suit was served on the first informant. However, fact remains that suit was filed before the FIR was lodged. In this backdrop, the FIR was lodged on 01/08/2019 suppressing of this fact. Shri. Purwant submitted that if at all it is a civil dispute, the entire consideration was not paid and, therefore, instead of approaching the Civil Court for specific performance of the contract, the first informant has chosen to file this FIR as pressurizing tactics. He, therefore, submits that custodial interrogation of the applicants is not necessary.

5. Learned APP opposed this submission. He relied on the investigation carried out so far. There is a statement of one Samir Shaikh to whom the applicant had sold their house after alleged transaction between the applicants and the first informant. He has mentioned in the statement that the applicants told him that they would settle the matter with the first informant. Shri. Jadhav, therefore, submitted that the applicants have knowingly entered

into further transaction and they created third party rights and, therefore, dishonest intention is clear from the facts. He submitted that in this background, custodial interrogation of the applicant is necessary.

6. I have considered these submissions. Prima facie it appears that there can be civil dispute between the parties. The informant is free to pursue her remedies. So far as, criminal offence is concerned, the informant had already approached the court of Magistrate and he has kept that matter for verification, therefore, I am not expressing any opinion as to whether criminal offence is made out, at this stage. It is a fact that informant had proceeded in her complaint before the Magistrate, however, the informant has suppressed the pendency of this complaint when she lodged the FIR. The FIR makes no reference to such complaint. Secondly, the complaint itself mentions that when the informant had approached the police earlier, they had not taken cognizance. Therefore, suddenly it does not stand to reason that the police now want to arrest the present applicants. The civil suit is already filed by the applicant No.2 before FIR is lodged. In this backdrop,

custodial interrogation of the present applicants is not necessary and it is not likely to lead to finding any evidence beyond what is stated in the FIR or what is mentioned in the document. In this view of the matter, applicants deserve protection of anticipatory bail.

7. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R. No.592/19 registered with Barshi City Police Station, the applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.25,000/- each (Rupees Twenty Five Thousand each Only) with one or two sureties each in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)