IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.242 OF 2019

Sanjay Shivnarayan Bhutada .... Applicant

versus

The State of Maharashtra .... Respondent

…....

- Mr. Venkateshwar Satyanarayan, Advocate for Applicant.
- Mr. S. H. Yadav, APP for the State/Respondent.
- Mr. Rathod T. M., PSI, Sarkarwada Police Station, Nashik City present.

CORAM : SARANG V. KOTWAL, J.
DATE : 13th AUGUST, 2019

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R. No.I-246/2018 registered with Sarkarwada Police Station, Nashik City under Sections 417, 419, 420, 465, 468, 471 of IPC.

2. The FIR is lodged by one Arvind Yewalekar on 18/8/2018. He has stated that in the year 2009, he came across

one advertisement in respect of a property. It was mentioned in the advertisement that the purchaser could purchase a shop. That shop would be given on rent and after five years the shop could be further sold for twice the amount for which it was purchased. The scheme looked attractive. Therefore, the first informant contacted the applicant. The applicant assured that the scheme was workable and could earn handsome profits for the first informant. The applicant showed him property at Nashik bearing survey Nos.659/3/2, 659/4/1, final plot No.365/A, 366/B. The applicant showed him a sanctioned plan dated 13/4/2005. He suggested that the informant should purchase Shop No.4. Accordingly, the informant agreed to purchase that shop admeasuring 238 Sq. Ft. The informant and the applicant entered into a registered sale deed dated 30/4/2009. The total price was fixed at Rs.10,62,000/- and in addition, the informant was to pay Rs.5 Lakhs by way of deposit. From time to time, the informant paid in all Rs.9,62,000/-. It is further mentioned in the FIR that the applicant told the informant that he would obtain the loan to the tune of Rs.6 Lakhs from M/s. NRI Housing Finance Pvt. Ltd. The informant was told that the loan was sanctioned. The possession was given to the informant by executing a possession receipt. Thereafter, the applicant told the first informant that if the shop was given to the applicant on rent, he would deposit the rent directly in the loan account of the informant. The applicant made a show that he was directly depositing the rent in the loan account with NRI Housing Finance Pvt. Ltd. The applicant was initially handing over some receipts to that effect. But since the year 2014, no such receipts were given. The informant started making inquiries. On 17/4/2015, when he went to that shop he saw a notice whereby the property was already attached in the name of a third person. The first informant made further inquiry and he came to know that the applicant had already sold said shop to one Vitthal Aher in the year 2006 itself. Thereafter, the applicant had mortgaged the same property with Akola Urban Co-Operative Bank Ltd. The informant realised that the entire transaction was fraudulent and he was cheated for the amount which he had paid to the applicant. On this basis, the FIR was lodged. The informant also came to know that no such finance company by name NRI

Housing Finance Pvt. Ltd. was in existence.

3. Heard Mr. Venkateshwar Satyanarayan, Ld. Counsel for the Applicant and Mr. S. H. Yadav, Ld. APP for the State.

4. Mr. Satyanarayan submitted that the claim that NRI Housing Finance Pvt. Ltd. company was not in existence is not correct. He relied on a document annexed to this application showing that such finance company was in fact in existence. He submitted that the informant was aware of the transaction between the applicant and Dr. Vitthal Aher. He submitted that the agreement for sale itself mentions that if there was any defect in the title then the applicant would clear it and handover the proper title documents to the informant. That clause was mentioned in the agreement itself. He therefore submitted that no offence is made out. He added that if at all; it is a civil dispute. There was no criminal offence committed by the applicant.

5. Ld. APP relied on the investigation carried out so far. The investigation papers included statement of Dr. Vitthal Aher which shows that the same shop was sold by the applicant in the year 2006 to this witness. The statement also supports the informant's case that the same shop was mortgaged with Akola Urban Co-operative Bank Ltd.

6. I have considered these submissions. The statement in the FIR clearly shows that it is a fraudulent transaction. The sale deed executed between the applicant and the informant makes no reference to the earlier transaction entered into by the applicant with Dr. Vitthal Aher. There is a general clause showing that the informant had seen the title documents and was satisfied with them and that the applicant would clear the defects in the title. This does not mean that the informant told about the previous transaction between the applicant and Dr. Aher. The fact that the same property was mortgaged with Akola Urban Co-operative Bank Ltd., was also not disclosed to the informant. Thus, informant was fraudulently deprived of his amount which he had

paid to the applicant. The investigation needs to be conducted in respect of a fraudulent loan transaction purportedly entered into with NRI Housing Finance Pvt. Ltd. The applicant's custodial interrogation for all these purposes is necessary. The submission that the FIR is lodged belatedly does not have much force because the informant had explained in his FIR itself that in the year 2014 he came to know that the property was mortgaged with some other bank. Thereafter, he took time to get the details and go to the root of the fraudulent nature of transaction entered into by the applicant. After obtaining basic information, FIR was lodged. In this view of the matter, custodial interrogation of the applicant is necessary. Therefore, there is no merit in the application. Hence, application is rejected.

(SARANG V. KOTWAL, J.)