IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 155 OF 2014
IN
ANTICIPATORY BAIL APPLICATION 553 OF 2013

Jatin Jasvantrai Vora … Applicant
Vs.
i. The Senior Inspector of Police
Vile Parle (East) Police Station

ii. State of Maharashtra … Respondents

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Mr. Sachin Pawar for the applicant.
Ms. Bina H. Jariwala I/by Auroma Law for the Respondent No.2.
Mrs. A.A. Takalkar, APP for the Respondent-State.

…

CORAM : PRAKASH D. NAIK, J.
DATE : 4th FEBRUARY, 2019.

P.C.

1. Heard both sides.

2. This is an application seeking withdrawal of the amount deposited by the applicant before this Court.

3. The applicant had preferred anticipatory bail application No. 553 of 2013 before this court apprehending arrest in connection with C.R. No. 58 of 2013 registered with Ville Parle Police Station.

4. During the hearing of the said application on 3rd July, 2013 learned advocate for the applicant submitted that applicant would deposit a sum of Rs. 5,00,000/- within a period of two weeks and

further amount of Rs.5,00,000/- within a period of two weeks thereafter. Application was then adjourned to 17th July, 2013. In pursuant to the said order, applicant had deposited an amount of Rs.5,00,000/- vide demand draft / pay order bearing No. 524191 drawn on the Dena Bank on 11th July, 2013. The applicant thereafter deposited further amount of Rs.5,00,000/- vide D.D. bearing No. 541153. The receipts of deposits are annexed to this application. Subsequently, the application for anticipatory bail was heard by this Court and by order dated 2nd August, 2013, the said application was rejected.

5. Applicant surrendered before Vile Parle Police Station on 8th August, 2013 and he was arrested by the police in connection with the aforesaid FIR registered for the offence punishable under Sections 406, 420, 463, 467, 471 and 474 of Indian Penal Code.

6. Applicant was produced before the concerned Court for remand and he was remanded to police custody till 12th August, 2013. Thereafter, the applicant was again produced for subsequent remand on 12th August, 2013 and he was remanded to judicial custody. The applicant preferred an application for bail before the Court of learned Magistrate which was rejected. Thereafter, the applicant preferred an application before the

Sessions Court seeking bail which was allowed and applicant was released on bail.

7. Learned counsel for the applicant submits that to show his bonafides the applicant had deposited sum of Rs.10,00,000/- before this Court. However, subsequently, the application for anticipatory bail was rejected and the applicant was arrested. It is submitted that amount deposited by the applicant be refunded to the applicant. The period of offence mentioned in the FIR relates to the year 2003 to 2004 and the First Information Report was lodged on 28th July, 2012 after a period of 9 years. It is submitted that the applicant would face trial pending before the concerned Court. Reliance is placed on order passed by this Court in similar circumstances in Criminal Application No. 55 of 2014 dated 2nd April, 2014 allowing the withdrawal of the amount deposited by the accused, during the pendency of application for anticipatory bail which was withdrawn and the applicant therein was arrested and enlarged on bail.

8. Learned advocate for the complainant opposed the application. Affidavit in reply is filed by the complainant. It is submitted that amount deposited by the applicant in pursuant order dated 3rd July, 2013 cannot be refunded to him as the said

amount is recovery of property in crime in the First Information Report registered by the police against the applicant. It is submitted that the prosecution case is that applicant had duped the complainant to the tune of Rs.23,00,000/-. The said amount is yet to be recovered from the applicant. The applicant is not entitled for refund of amount and on the contrary it should be given to the informant as per Section 451 of Code of Criminal Procedure as the same is property of Respondent No.2. The applicant is erroneously claiming the refund of Rs.10,00,000/- deposited by him. The deposit of amount in the Court is the property recovered during the course of investigation and it should be returned to the person who has suffered loss. The informant has been deprived of the said amount. The applicant is involved in serious crime of cheating and forgery.

9. The amount of Rs.10,00,000/- was deposited by the applicant in pursuant to order dated 3rd July, 2013. The applicant had volunteered to deposit the amount apparently to show his bonafides. Initially, interim relief was granted but the application for anticipatory bail was subsequently rejected vide order dated 2nd August, 2013. The applicant was thereafter arrested and he had undergone custody until he was granted bail. Admittedly the

amount of Rs.10,00,000/- deposited by the applicant was not recovered by the police during the investigation and cannot be termed as muddemal property which is subject matter of the C.R. No. 58 of 2013 registered with Vile Parle Police Station. Thus submission advanced by the counsel for the respondent cannot be accepted. In view of factual aspects the amount will have to be refunded to applicant/accused.

ORDER

i. Criminal Application No. 155 of 2014 is allowed;

ii. Applicant is permitted to withdraw the sum of Rs.10,00,000/- deposited in this Court in Anticipatory Bail Application No. 553 of 2013 with accrued interest if any.

iii. Criminal Application No. 155 of 2014 stands disposed off.

(PRAKASH D. NAIK, J.)