IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.985 OF 2019

Vyankatrao Pandurang Patil .... Applicant

versus

The State of Maharashtra .... Respondent

WITH
CRIMINAL APPLICATION NO.929 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO.985 OF 2019

Ulhas Shivajirao Gapat ...Intervenor

IN THE MATTER BETWEEN

Vyankatrao Pandurang Patil .... Applicant

versus

The State of Maharashtra .... Respondent

…....

- Mr. A. P. Mundargi Sr. Advocate I/b. Abhishek Yende, Advocate for Applicant.
- Mr. Rajiv Chavan Sr. Advocate I/b. Priyanka B. Chavan, Advocate for Intervener.
- Mr. S. H. Yadav, APP for the State/Respondent.
- Mr. J. H. Mane, API, Bhigwan Police Station, Pune present.

CORAM : SARANG V. KOTWAL, J.
DATE : 20th AUGUST, 2019

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R. No.33/2019 registered at Haveli Police Station, Pune under Sections 420 and 406 of IPC.

2. The offence is lodged at the instance of one Ulhas Gapat. He has stated that the present applicant is a distant relative of the informant. The applicant was a Chartered Accountant. Since they were related, informant and his father placed trust on him. The applicant suggested to them that since they were having surplus amount in their account they could use that to purchase property. The applicant had formed a Private Limited Company alongwith his wife. In February 2007, the applicant suggested to the first informant's father that they could purchase land in partnership. He told that he had already entered into talks with the land owners Balasaheb Hagawane, Satpute, Ghule and Ganesh Hagawane. He represented that about 70 acres of land was available for purchase and the rate quoted was Rs.3 Lakhs per acre. It is mentioned in the FIR that the applicant represented to

them that they would be given a land in proportion to their investment. It is further mentioned that the applicant asked the informant to draw demand drafts in the name of Balasaheb. Thus, in all 5 demand drafts amounting to Rs.25 Lakhs were given by the informant's father issued in the name of Balasaheb. Similarly, Rs.15 Lakhs in the form of 3 demand drafts were given in the name of Mauli Properties Pvt. Ltd. which was applicant's company. It is further mentioned in the FIR that, the applicant obtained signature of the first informant on the pretext of completing the documentation in the land deal. It is further mentioned that in August 2007, the applicant obtained Rs.20 Lakhs more for completing the deal. That amount was given in cash. Thereafter, the informant was continuously asking the applicant in respect of completion of the deal. However, the applicant was avoiding to give any clear answer. It is further mentioned that subsequently after few years the informant became a partner in M.A.V.P. Company in 2008. Though the FIR mentions that year is 2008, it transpired during investigation that it was wrongly typed as 2008 and actually it was year 2018. However, the fact remains that after he became partner in that firm, the informant started making inquiries in respect of the land because he wanted to obtain loan by mortgaging that land. Thereafter, on inquiries, he came to know that no such lands were transferred in his father's name. He made inquiry with Balasaheb who told him that demand drafts were received by him in the year 2007 and the lands were already transferred in the name of present applicant. The informant made further inquiry. He came to know that the lands were indeed transferred in the name of present applicant and his partner Nitin Kadam. The said pieces of land were sold by the applicant in the year 2011 and the applicant had obtained profit from said transaction. The informant's case is that, thus the amount was misappropriated and the lands were not transferred in his or his father's name. Based on these allegations, he lodged his FIR.

3. Heard Mr. A. P. Mundargi, Ld. Senior Counsel for the Applicant, Mr. Rajiv Chavan, Ld. Senior Counsel for the Intervener and Mr. S. H. Yadav, Ld. APP for the State.

4. Mr. Mundargi submitted that the present applicant was a Chartered Accountant and was regularly filing the informant's father's income tax returns. He submitted that, in the balance sheet of the informant's father, the said amount of Rs.40 Lakhs was shown as loan amount given to the applicant. He further submitted that the informant was well aware of the nature of the transaction. It was already decided the lands were to be purchased by the applicant. The applicant has used the money advanced by the informant's father which was treated as loan. Shri. Mundargi submitted that even in the balance sheet of the applicant, said amount was reflected as the loan amount taken for the applicant's father. Shri. Mundargi relied on a registered sale deed executed on 30/3/2007 between Nitin Kadam and the present applicant as the purchasers and Balasaheb as the seller in respect of land bearing Gat No.145 at village Nandoshi. He invited my attention to the fact that first informant Ulhas had signed this registered sale deed as a witness to that document. He submitted that for the purpose of purchasing that land the applicant had used the demand drafts issued by the first informant's father in the

name of the seller Balasaheb. He therefore, submitted that the informant was well aware that the demand drafts issued by his father were to be used by the applicant to purchase the land in his own name. Shri. Mundargi further relied on another document which was Memorandum of Understanding executed between the applicant as a purchaser, Nitin Kadam as a seller and Balasaheb and others as confirming parties. This MOU mentioned the pieces of land which were to be purchased by the present applicant. These lands were situated in village Nandoshi as well as village Kirkitwadi. In the MOU, the applicant was mentioned as a purchaser. This document bears the signature of the father of the first informant. Thus, according to Shri. Mundargi, even this transaction shows that the informant and his father were aware that the demand drafts issued by the informant's father were to be used by the applicant for purchasing the pieces of land in his own name. Shri. Mundargi further relied on the notice issued by the Advocate for the first informant dated 7/12/2018. In the entire notice, there was no mention of the further amount of Rs.20 Lakhs which was paid in cash for the purpose of completing the deal. He further submitted that the nature of transaction was known to the parties and after 10 years there was no necessity of custodial interrogation of the applicant. The documents spoke for themselves.

5. As against these submission, Ld. Senior Counsel Shri. Chavan and Ld. APP Shri. Yadav submitted that though the amount was advanced as a loan, it was highly unbelievable that demand drafts came to be issued in the name of a third person i.e. Balasaheb and not in the name of the person i.e. present applicant who had actually received the loan. He further submitted that there is variance between the entries shown in the balance sheet of the applicant and those shown in the balance sheet of the first informant's father. He relied on the entry made in the balance sheet of the informant's father's HUF which shows that Rs.40 Lakhs were mentioned as the loan advanced to the applicant. This balance sheet was also prepared by the applicant. He invited my attention to the entry in the balance sheet of the applicant wherein said amount was bifurcated into Rs.25 Lakhs and Rs.15 Lakhs as a

loan advanced by the S. R. Gapat - HUF and S. R. Gapat - Mauli Properties respectively. He therefore, submitted that both the entries do not match and are manipulated by the applicant. He therefore submitted that undisputedly the applicant had taken Rs.40 Lakhs and further Rs.20 Lakhs for completing the land deal and for purchasing land in the name of informant and his father. But the transaction was not completed and the amount was misappropriated and therefore, offence was committed. Therefore, he submitted that anticipatory bail should not be granted to the present applicant.

6. I have considered these submission. The investigation carried out so far consists mainly of all the documents. The documents include various sale deeds, MOU and balance sheet as referred to in the discussion made hereinabove. The transaction is is from the year 2007. Admittedly, all these demand drafts were issued in the year 2007. The informant had waited for more than 10 years to pursue the completion of the purchase of the pieces of land in his and in his father's name. It is rather difficult to believe

that informant would wait for 10 long years before asking the applicant to complete the sale transaction. However, this factor will have to be decided by the Trial Court. The applicant may eventually face the trial. The other submission that the informant was well aware of the transaction is strengthened by the documents i.e. sale deed executed in March 2007 referred to hereinabove as well as MOU which is also referred hereinabove. They bear the signatures of the informant and his father as mentioned earlier. Thus, the informant was aware that the demand drafts issued by his father were to be used by the applicant to purchase the land in his name. Therefore, at this stage, there is considerable force in the submission of Ld. Senior Counsel Shri. Mundargi that the parties were aware about exact nature of transaction and it was agreed that the amount which was advanced by the informant's father was to be treated as a loan accepted by the applicant. The contention of Shri. Chavan that loan would have been advanced to the person who was actually receiving it and not in the name of third party, will have to be seen in the background of various documents which are referred in the above discussion. All these factors undoubtedly will have to be decided during the trial. Today, I am considering the question of necessity of custodial interrogation. The issuance of demand draft is not disputed. The only question is for what purpose those demand drafts were issued. This question cannot be answered by custodial interrogation of the applicant. This question will have to be decided by the Trial Court after the entire evidence is led. The rest of the evidence is in the form of documentary evidence. The documents are easily available and the investigating agency is already in possession of such documents. The transaction is of the year 2007. Thus, it is more than 10 years old. Therefore, at this stage, no purpose will be served by custodial interrogation of the applicant. Hence, the applicant can be protected by the order of anticipatory bail. The applicant of course will have to co-operate with the investigation. In this view of the matter, following order is passed.

ORDER

(i) In the event of his arrest in connection with C.R. No.33/2019 registered at Haveli Police Station, Pune, the applicant is directed to be released on bail on his executing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in like amount.

(ii) The applicant shall attend the concerned Police Station from 12.00 p.m. to 4.00 p.m. on every alternate day from 26/8/2019 to 7/9/2019.

(iii) Since the applicant is granted protection of anticipatory bail and since the present application is being allowed, the applicant is permitted to withdraw the amount which he has deposited in this Court pursuant to the earlier orders passed in this application.

(iv) The application is accordingly disposed of.

(v) The Criminal Application No.929/19 is accordingly disposed of.

(SARANG V. KOTWAL, J.)