

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1403 OF 2019

Sumeet Ganpatrao Bachewar	]	
Aged about 48 years,	]	
Occupation Business,	]	
Residing at Plot No. 25, Ground	]	
Floor, Sector 28, Vashi, Navi	]	
Mumbai.	]	...Applicant

Versus

1.	The State of Maharashtra	]	
	At the instance of the Senior	]	
	Inspector of Police, A.P.M.C.	]	
	Police Station, Vashi.	]	
		]	
2.	Mr. Sagar Ravindra Malwade	]	
	Flat No. 403, Dnyaneshwari,	]	
	Flontan B/2, Sector 12, Kharghar,	]	
	Nahi Mumbai- 410210.	]	...Respondents

APPEARANCES-

Mr. Manoj Mohite a/w. Mr. Abhijit Patil i/b. Mr. S.P. Mhatre for Applicant.

Mr. Akshay Bafna i/b. Ms. G.N. Gokhale for Respondent No. 2.

Mr. A.R. Patil, APP for Respondent – State.

IO- API Mr. Santosh Shetye, EOW, Unit-I Present in Court.

CORAM : S.S. SHINDE, J.

DATE : 6th SEPTEMBER 2019

JUDGMENT

1. This application is filed with the following substantive prayer-

a) That this Hon'ble Court in exercise of discretionary jurisdiction of this Hon'ble Court under Section 438 of the Code of Criminal Procedure, 1973, be pleased to call for the records and proceedings of the case and upon perusing the same, this Hon'ble Court be pleased to grant the Anticipatory bail to Applicant.

2. Applicant herein is arraigned as accused in FIR No. I-79/2019 for the offences punishable under Sections 420, 406 read with Section 34 of Indian Penal Code. The present application is filed under Section 438 of Code of Criminal Procedure (for short “Cr.P.C.”) on following grounds.

That, the entire dispute is of civil nature and civil litigation is pending in respect of said dispute. The Applicant has nothing to do with the said allegations in the FIR. That, the Applicant is falsely implicated in the present crime and has nothing to do with the same. That, a civil transaction/dispute have been falsely portrayed as a crime. That, the Applicant has not misrepresented any facts to anyone including the complainant. The Complainant had purchased Lease Hold Rights in the said property from the Applicant after having full knowledge that the plot was not transferred in the name of the Applicant. That, the Applicant has never denied transfer of the said plot in the name of the Complainant. The Complainant is fully aware that the transfer of the said plot is pending due to criminal conspiracy hatched by Mrs. Sunil Bhanushali and Mr. Ananta Karandi and no fault can be attributed to the Applicant. That, the disputes

between the Applicant and the Complainant are of civil nature. All relevant documents are submitted to the CIDCO to fulfill contractual obligation. The Applicant is ready and willing to produce original documents, which are in custody of the Applicant before the Investigating Officer. Thus, custodial interrogation of the Applicant is not at all warranted in the present case. The Complainant has made part payment towards the property and till date substantial amount is balance outstanding with the complainant. The Applicant has already initiated civil proceedings for specific performance much prior to lodging of the Complaint, which fact shows bonafide intention of the Application. That, the entire case of the prosecution is based on documents, which are already in possession of the concerned Investigating Officer and/or the Complainant. Nothing incriminating and/or discriminating is to be recovered and/or discovered from the Applicant or at his instance. Hence, custodial interrogation of the Applicant is not at all warranted in the present crime.

3. Learned counsel appearing for th Applicant invited attention of this Court to the various documents placed on record, so as to demonstrate that, the dispute is of civil nature. At the time of entering into the transaction/agreement with the Respondent No. 2, everything was brought to his notice. Learned counsel further invites attention of this Court to the memorandum of understanding so also averments in the application,

anneures thereto and submits that, part of the amount under the agreement is already paid to the contesting Respondent and the Applicant is ready to pay the balance amount to him. It is submitted that, pursuant to the order dated 9th August 2019 passed by this Court, the Applicant appeared before the Investigating Officer and co-operated the Investigating Officer during the investigation and also submitted all relevant documents. It is submitted that, even the Investigating Officer is satisfied about the co-operation extended by the Applicant during the course of investigation. Learned counsel invites attention of this Court to the affidavit in reply filed on behalf of the Applicant wherein it is stated that, they have fully co-operated the Investigating Office during the course of investigation. Therefore, learned counsel appearing for the Applicant submits that, application deserves to be allowed.

4. On the other hand, learned counsel appearing for Respondent No. 2 relying upon the averments in the affidavit in reply made following submission-

That, the present case is in no manner a civil transanction and/or dispute as is being claimed by the Applicant in his Anticipatory Bail application. That the Applicant has distincy committed the offences punishable under Sections 406 and 420 of the Indian Penal Code, 1860 as the Applicant since inception had the knowledge that the property which he

is portraying as his was never his property. That, the Applicant knew that the title of the said property is under dispute and the same is pending before the CJSD Pnavel Court for adjudication since 2013. That, the Applicant very well knew that, he was in no position to sell the said property to third persons as his own title to the said property was under dispute and this fact was never revealed by the Applicant to the Respondent No. 2/Original Complainant. The Applicant instead induced the Respondent No. 2/Original Complainant into believing that, the property belongs to the Applicant and the Applicant has authority to sell the same to other parties. That, the Applicant claims in his Anticipatory Bail Application that, he executed a purported Agreement/Memorandum of understanding with Mr. Sunit Bhanushali on 28th April 2004 and accordingly the Applicant paid an initial amount of Rs. 2,00,000/- to Mr. Sunil Bhanushali on 28th April, 2004. It is pertinent to note that, the purported agreement that, the Applicant is relying upon was never executed on 28th April 2004. That a perusal of the documents annexed by the Applicant in his Anticipatory Bail Application will reveal that the purported document is dated 28th September 2004 and not 28th April 2004. Therefore, the claim of the Applicant that, he entered into a agreement with Mr. Sunil Bhanushali on 28th April 2004 is false, frivolous and bogus. That the genuineness of the said document itself comes under question as there are serious discrepancies in the alleged MOU dated 28th April 2004 and the same needs to be investigated whether the said

purported document is a genuine document or not. That a perusal of the purported MOU dated 28th April 20004 submitted by the Applicant before this Hon'ble Court shows that in paragraph 18, page 4 of the said MOU it is stated that, the Lessees (the farmers) have sold their rights, title and interest in the said plots admeasuring 2350 sq.mts to Mr. Sunil Bhanushali and on the basis of the same Mr. Sunil Bhanushali is selling the same to the Applicant. It is pertinent to note that, the date of the so called development agreement is blank in the MOU. That, the date of the development agreement of Mr. Sunil Bhanushali and the farmers is missing. Now it is an interesting fact to that, Mr. Sunil Bhanushali had already filed a Special Civil Suit before the Panvel Court bearing No. Special Civil Suit No. 491/2011 against the Co-Accused (Mr. Ananta Patil Karadi) and in the said Civil Suit, Mr. Sunil Bhanushali claims that he entered into an Agreement to sale with Co-Accused (Mr. Ananta Patil Karadi) on 5th April 2005. That, the Applicant had complete knowledge of the fact that a Special Civil Suit was filed by Mr. Sunil Bhanushali against the Co-Accused and that a settlement was arrived at between Mr. Sunil Bhanushali and the Co-Accused in 2011 itself. That, the Applicant was very well aware of the said fact and hence he filed Civil Suit No. 356 of 2013 against Mr. Sunil Bhanushali.

5. He further submits that, there are serious allegations made in the FIR. He also invites attention of this Court to the antecedent of the

Applicant and also submits that, there is possibility of the Applicant to flee from justice and also hampering and tampering with the prosecution witnesses and documents and therefore, he prays that, application may be rejected.

6. Heard learned counsel appearing for the parties at length. In fact it was not necessary for the parties to place on record number of documents and burden the record, which was unwarranted when the application is filed under Section 438 Cr.P.C. Be that as it may, after due consideration of rival contentions and keeping in view the provisions of Section 438 Cr.P.C., this Court is not inclined to entertain this application. Since, *prima facie* it appears that, the Applicant has indulged in following offences of similar nature.

1. *FIR No. 67/2013 for offences under Section 302 & 34 of IPC at Vashi Police Station.*
2. *FIR NO. 151/2012 for offences under Section 420, 406, 476, 468, 471, 34 of IPC at APMC Police Station.*
3. *FIR No. 162/2012 for offendes under Section 502, 506 of IPC and Section 3, 25 of Arms Act.*
4. *FIR No. 67/2013 for offences under Sections 420, 406, 476, 468, 471, 34 at Vashi Police Station.*
5. *FIR No. 93/2012 for offences punishable under Section 420, 406, 476, 468, 471, 34 at NRI Police Station.*

7. It is true that, in some offences summary is filed or acquittal is

granted by the Court. But ultimately the allegation is that, the Applicant is in habit of cheating farmers and taking their lands with an intention to cheat them from beginning and deprive them from their immovable property under the pretext of offering them handsome amount. Ultimately the Court has to exercise its discretion, keeping in view the antecedents of the Applicant and also over all facts situation and allegations made in the FIR and since the investigation is in progress and yet charge sheet is not filed by the Investigating Officer, it is not proper to allow the prayer of the Petitioner. Since an investigation is in progress this Court has avoided to give elaborate reasons.

Therefore, in the light of *prima facie* observations made herein above, this Court did not think it appropriate to exercise the discretion, particularly keeping in view the antecedents of the Applicant. For the aforesaid reasons, this Application stands rejected.

8. On the basis of this order, no coercive action should be taken against the Applicant for two weeks from today.

9. The observations made herein above are *prima facie* in nature and confined to the adjudication of present application only.

(S.S. SHINDE, J.)