

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

ANTICIPATORY BAIL APPLICATION NO.2196 OF 2018

Vinay Ganesh Gosavi	 Applicant
versus	
The State of Maharashtra	 Respondent

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- Mr.Shekhar A. Ingawale, Advocate for Applicant.
- Ms.A.A. Takalkar, APP for the State/Respondent.
- API Mr.Jayant Rajurkar, EOW-2, New Mumbai, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 06th AUGUST, 2019

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.169/18 registered with Panvel City Police Station, Navi Mumbai, under sections 420, 406 r/w 34 of the Indian Penal Code.

2. The FIR is lodged by one Vinu Venu Gopal on 14/04/2018. He has stated that he and his father had met the heirs of one Joma Bama Patil. Those heirs were Padmavati Hiraji Patil, Sanjay Hiraji Patil, Swapna Hiraji Patil, Pinky Hiraji Patil, Vasanti Ankush Bhagat, Ujwala Naresh Morbekar. The informant

was told that they were heirs of Joma Patil and were the original owners of Survey No.153 of village Vahal, Taluka Panvel, District Raigad. In lieu of acquisition of that property, they were allotted 1650 sq.mtrs. of land in 12.5% scheme. The first informant entered into agreement with those persons for Rs.63,52,000/-. One MOU and agreement was entered into in June and July 2006. All of the aforementioned heirs had put their signatures on those documents. The informant's father had signed those documents. In pursuance to that transaction, the informant had paid Rs.25,71,000/-. The father of these heirs Hiraji Joma Patil had gone missing and for adding their names as owners civil suit bearing No.85/06 was pending in Court at Panvel. CIDCO had allotted land bearing No.207 admeasuring 1200 sq.mtrs. at sector 3, Ulwe, Navi Mumbai. In the aforementioned civil suit there was a compromise between two branches of Joma. The other branch was represented by Ranjana Anant Patil, Roshan Anant Patil and Sachin Anant Patil. The heirs Padmavati Hiraji Patil and others got heirship certificate from the Court in Civil Suit No.574/14. Thereafter the informant

repeatedly asked to transfer the land in his name. At that time, he was informed that the Applicant had already purchased the said land from all those heirs. The Applicant had purchased this property with Roshan Patil, who was heir from branch of Anant Joma Patil. The informant came to know that on 18/06/2010 a tripartite agreement was executed between CIDCO, Roshan Anant Patil and one Parbat Manji Ghoti. Thereafter the informant was unable to get his land or get his money refunded. Therefore he has lodged this FIR. It is alleged in the FIR that the present Applicant had cheated him because he had entered into the transaction with other heirs and had promised to refund the amount to the first informant. On this basis, the FIR is lodged.

3. Heard learned Counsel Mr.Shekhar A. Ingawale for the Applicant and learned APP Ms.A.A. Takalkar for the State.
4. The learned Counsel Mr.Ingawale submitted that the Applicant had not directly dealt with the informant. Therefore there is no question of making any representation to the informant. The Applicant had not accepted any money from the

first informant. Therefore there was no question of commission of either of the criminal breach of trust or misappropriation of property. He further submitted that there is no privity of contract between the Applicant and the informant. According to him, no offence is committed by him. Therefore his custodial interrogation is not warranted.

5. Learned APP submitted that the investigation shows that the Applicant had entered into transaction with Parbat Ghoti, wherein he had stated that he was lawful owner and was in possession of the plot No.207 admeasuring 1200 sq.meters i.e. the aforementioned plot. She submitted that this representation was not correct. She further submitted that the MOU entered into between one branch of Joma Patil i.e. Padmavati Patil and others had entered into transaction with the Applicant with Roshan Patil, as a confirming party. In that MOU there is a reference that the Applicant was to pay Rs.20,00,000/- to the first informant. She further submitted that all these commitments were not fulfilled by the present Applicant.

6. I have considered these submissions. There is considerable force in the submissions of learned Counsel Mr.Ingawale. There was no privity of contract between the first informant and Applicant. The first informant and his father had met the original owners, who had made certain representations. Believing their representation, they had directly entered into transaction with those owners. The present Applicant was not even in the picture at that time. The money was also accepted from the informant by those owners. Therefore, even at this stage, it cannot be said that under some representation made by the present Applicant, the informant was made to part with his money due to which, he has suffered losses. As far as the subsequent transaction between the Applicant and Parbat Ghoti is concerned, this is a separate transaction and if at all there is any aggrieved party, it is that person Parbat Ghoti. The informant has not concern with their transaction. Secondly, even in respect of transaction between the Applicant No.1 and Padmavati and others, in that agreement also the first informant

was not a party. Therefore if the first informant is deprived of his money, it is the original owners who are responsible. It cannot be said that the Applicant should also be arraigned as an accused because the informant has suffered losses due to acts of the original owners.

7. It is also important to note that all these transactions had taken place from the year 2006 to 2010 and the FIR is lodged in 2018, that delay has remained unexplained. Therefore, at this belated stage, no purpose will be served by custodial interrogation of the present applicant. Learned Counsel Mr.Ingawale has rightly submitted that since, the first informant has lost remedy of approaching civil court because of lapse of limitation period, he has filed this present FIR to pressurize all the parties concerned. In this view of the matter, custodial interrogation of the Applicant is not necessary. He can be protected by the order of anticipatory bail. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.169/18 registered with Panvel City Police Station, Navi Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall attend the concerned Police Station as and when called.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)