IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2449 OF 2018

Vijay Abasaheb Ghorpade .... Applicant

versus

The State of Maharashtra & Anr. .... Respondents

- Mr. Ashish P. Agarkar a/w. Abid Mulani I/b. Prasanna P. Patil, Advocate for the Applicant.
- Ms. S. S. Kaushik, APP for the State/Respondent.
- Mr. Amey Deshpande, Advocate for Respondent No.2 / Complainant.
- Mr. U. Rathod, API, Khadak Police Station, Pune City, present.

CORAM : SARANG V. KOTWAL, J.
DATE : 19th JULY, 2019

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R. No.282/2017 registered at Khadak Police Station, Pune City on 5/7/2017 under Sections 406, 420, 467, 468, 471 r/w. 34 of IPC.

2. The FIR is a result of the order passed under Section 156(3) of Cr.P.C. passed by the Court Room No.6, J.M.F.C., Pune

on 21/6/2017.

3. The complaint is lodged by one Pravin Sanghvi against the present applicant, his wife and his son. It is mentioned in his complaint that the complainant was a businessman. The applicant was engaged in the business of construction and real estate. The applicant had a proprietory firm by name M/s. Pooja Constructions. The applicant had acquired development rights and irrevocable Power of Attorney in respect of land bearing survey No.128/1/4 admeasuring about 00.21 R and in respect of survey No.131/1A/5 admeasuring about 00.6.5 R situated at Village Dhayari, Taluka Haveli, District Pune from the original owners. The applicant had acquired all the rights including TDR rights of the said property from the owners. The documents were executed and were registered before the Sub-Registrar, Haveli No.10 on 6/8/2012. It is further mentioned in the complaint that area admeasuring about 500.11 sq. mtrs out of survey No.128/1/4 and area admeasuring about 410.21 sq. mtrs out of survey No.131/1A/5 i.e. total area of 910.32 sq. mtrs were earmarked by

Pune Municipal Corporation for reservation for D. P. Road and therefore, the applicant was entitled to avail and utilise the benefits of TDR / FSI assigned to him. That was representation made by the applicant before the complainant. In the month of January 2015, the applicant approached the complainant and showed his willingness to sell the available TDR / FSI arising out of aforementioned properties. The applicant had represented to the complainant that the property was free from encumbrances and that the applicant had acquired all the rights including TDR / FSI in respect of these properties. He represented that he had total area of 910.32 sq. mtrs TDR / FSI available with him. Believing his representation, the complainant decided to purchase those rights. The complainant and the applicant entered into two MOUs dated 19/1/2015 and 22/1/2015. In the first MOU dated 19/1/2015 the recitals mentioned that the applicant was desirous of assigning / transferring the TDR arising from properties subject to minimum of 910.32 sq. mtrs. The consideration was fixed at Rs.2 Crores. The MOU was entered into between M/s. Pooja Construction which was described as proprietory firm of the applicant on one hand and the present complainant on the other.

4. The MOU dated 22/1/2015 was also between the same parties for the same property. However, the details in respect of modalities to complete the transaction were mentioned in that supplementary MOU. There was a penalty clause if there was delay in getting the TDR and there was a clause that if the TDR was not processed then the applicant was to give back Rs.1 Crore with penalty of Rs.10 Lakhs on 19/4/2015.

5. However, neither the rights were given under the MOU nor the amount was refunded with penalty to the complainant and therefore the complaint was lodged. Ld. Magistrate passed order under Section 156(3) of Cr.P.C. directing investigation. The said order resulted in registration of the FIR as mentioned earlier.

6. Heard Mr. Agarkar, Ld. Advocate for the Applicant, Ms. Kaushik, Ld. APP for the State and Mr. Deshpande, Ld.

Advocate for Respondent No.2 / Complainant.

7. Ld. Counsel for the applicant submitted that the entire dispute is purely civil in nature and there is absolutely no criminality involved in it. He submitted that the first informant could have very well approached a Civil Court for refund of the money and that he has filed the present application only to pressurize the applicant. He further submitted that he had taken the required steps for processing the TDR however due to financial delays his efforts were unsuccessful.

8. As against this submission, Ld. APP as well as Ld. Counsel for the Intervener submitted that the applicant's intention of cheating is manifest right from the inception. The applicant never had any intention to honour his commitment. The MOU was entered into, in the year 2015 and till today it was not acted upon. The money is not refunded with penalty. Importantly both the Ld. APP and Ld. Counsel for the Intervener submitted that the applicant had mortgaged the same land with Vidyanand Co-

Operative Bank Limited, Solapur on 25/4/2017 for Rs.1,25,00,000/-. The said document was executed between the said Bank and M/s. Ghorpade Construction which was a Proprietorship firm of the applicant's son. The present applicant and his firm M/s. Pooja Construction were shown as one of the guarantors. This document was registered with the Sub-Registrar. The Bank had made an application before the Talathi for entering the encumbrances of the Bank in respect of that property. There is no mention in that mortgage deed that the applicant had entered into any transaction with the first informant.

9. Thus, it is more than clear that the applicant had entered into the transaction with a Bank. That transaction was entered into by his son but the applicant is also a party to that document as a guarantor. There is no mention in the mortgage deed, of the earlier transaction with the present complainant. The applicant has admittedly accepted Rs.1 Crore since the year 2015. The mortgage deed was executed in the year 2017. Thus, the applicant has cheated the present complainant and also

misappropriated huge amount of Rs.1 Crore taken from him. The offence is grave and serious which requires custodial interrogation of the applicant and therefore, application for anticipatory bail is rejected.

10. Before parting with this order, there is one more disturbing issue which is required to be dealt with. This application was filed on 27/11/2018. On 29/11/2018, a solemn statement was made before this Court that the applicant was ready and willing to repay the amount of Rs.1 Crore to the first informant and if the first informant was not willing to accept the amount, to prove his bonafide without prejudice to his right, he would deposit the said amount in the Registry of this Court. Thereafter, the interim protection was granted to the applicant. On 18/3/2019, time was sought to reach an amicable settlement. On 9/4/2019, another solemn statement was made on behalf of the applicant that the applicant would make the entire payment of the said amount by 30/6/2019. No such payment was made till that date. On 5/7/2019, another solemn statement was made

before the Court that the payment would be made within a period of two weeks from that date i.e. 5/7/2019 and the applicant prayed for a last chance. This Court by way of indulgence and by way of last chance accepted the statement and the matter was adjourned for two weeks. It was made clear that if the undertaking was not honoured by then, suitable action would be taken and the matter would be decided on merits. The matter is already decided on merits. However, considering the repeated breach of solemn undertaking given to this Court, stringent action needs to be taken against the present applicant. The applicant was enjoying protection from since November 2018 on a pretext which is proved to be false by his conduct. This act of the applicant is not only a clear abuse of process of law but amounts to interfering with administration of justice. Hence, issue a show cause notice to the applicant as to why action should not be taken against him under the provisions of Contempt of Courts Act.

11. The notice is made returnable after four weeks. The matter be placed for compliance.

12. The Investigating Officer is present in the Court. In addition to the Court notice, he shall serve a copy of the show cause notice on the applicant.

13. Stand over to 16/8/2019 for compliance.

(SARANG V. KOTWAL, J.)