

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3127 OF 2018

Mangesh Janardhan Mohite	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Santosh H. Chari for applicant.
Mr.M.G.Patil, APP, for State.
Mr.Taraq Sayed I/by D.P.Jaiswal for intervenor.

CORAM : PRAKASH D. NAIK, J.

DATE : 11th January 2019

PC :

1. This is an application for bail in CR No.72 of 2014 registered with V.P.Road Police Station for offences under Sections 406, 420 r/w 34 of Indian Penal Code. The FIR was lodged on 15th March 2014. The case of complainant is that he was having friendly relationship with one Sanjay Vedpathak who informed him that one developer Satish Chaturvedi has been constructing building by seeking permission from MHADA. Mr.Vedpathak represented to complainant that the construction of building and booking of flats is going on and he knows the chairman and secretary of tenants association who in turn having good relations with the developer Mr.Satish Chaturvedi. Mr.Vedpathak represented that if the complainant wants to purchase the flat in the building, he would arrange the same with lower price than market rate. The complainant believed in the said representations. Mr.Vedpathak took the complainant to Pimpalwadi to the office situated on the ground floor of one tower which was under construction. When the

complainant reached at the said site with Mr.Vedpathak, three persons including the applicant, his wife and brother were present at the said office. Mr.Vedpathak informed the complainant that the said persons are selling the flats in the building under construction through developer Satish Chaturvedi and that Mr.Mangesh Mohite is chairman and his brother Mr.Sanjay Mohite is secretary of the tenants association. The complainant showed his willingness to purchase the flat in the said building. They informed the complainant that the market rate is Rs.7,000/- per sq.ft and total cost would be Rs.1,05,00,000/-. Similarly the construction of building was to be completed by the end of 2010. The complainant came to know that flat no.1904 was not booked by any person and therefore he decided to purchase the said flat. The complainant made payment of Rs.74,75,000/-. It is alleged that Rs.9 lakhs were paid by cheque and Rs.65.75 lakhs were paid by cash. Since 2010 till 2014 the applicant and his associates did not hand over possession of the flat. Thus, the complainant was cheated and hence the FIR was lodged.

2. The co-accused were arrested and charge sheet was filed against them. However, it is stated that the applicant was absconding and could not be arrested. The applicant was arrested in May-2018.

3. The advocate for applicant submitted that the applicant was not absconding and he was available at home. He was suffering from serious ailments of heart disease and had been undergoing medication. It is submitted that the prosecution has not been able to establish that the amount has been paid to the applicant. The

cheque amount was given to the applicant towards loan transaction. There are no documents to substantiate the allegation that the flat was to be sold to the complainant. There is no proof of payment of Rs.65 lakhs. It is, therefore, submitted that in the absence of any evidence, the applicant may not be detained in custody.

4. It is further submitted that the prosecution relying on the statements of two witnesses who had allegedly stated that even they had made some payment to the applicant. It is submitted that the said persons are occupying the premises of applicant by forcefully entering the premises.

5. Learned APP submitted that there is sufficient evidence against the applicant to show his complicity in the crime. The cheques of Rs.9 lakh were issued. The cash was paid in the presence of witnesses. Thus, the allegations made in the application are fortified by evidence of witnesses. It is further submitted that the applicant was absconding since 2014 and could be arrested only in 2018. Learned APP also relied upon statement of two witnesses namely Samir Pathare and Mr.Khubchandani.

6. Learned counsel for intervenor opposed application for bail. It is submitted that there is no effective investigation by police. There is no recovery. The complainant was required to file a petition in this Court seeking appropriate directions for carrying out effective investigation. It was pointed out to this Court that the applicant and other accused are not arrested by police and this Court had passed order dated 2nd May 2018 calling for report of investigation and pursuant to that the applicant has been arrested.

7. I have perused the FIR and other documents which are part of charge sheet and annexed to this application. It appears that the transaction was executed between the complainant and the applicant allegedly in the year 2006 and it is alleged that from 2006 to 2010 onwards the payment was made by complainant to the applicant. The amount of Rs.9 lakh was paid by cheque which according to the applicant was towards loan amount. It is pertinent to note that although allegedly the flat was to be sold for Rs.1.05 crores, there was no execution of any document to support said transaction. The applicant has stated that Rs.65 lakhs were paid by cash up to the year 2010, however, there is no proof to prove said statement. The witnesses were associated with the complainant. It is indeed apparent that the applicant was not arrested. However, from the statements of the complainant it appears that although he was available at his residence, police were did not arrest him and there is no investigation. It is also contended by the complainant that he is seeking further investigation u/s 173(8) of Code of Criminal Procedure. The applicant was not arrested till 2018.

8. Considering the nature of evidence, case for grant of bail is made out on certain terms. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.3127 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.72 of 2014 registered with V.P.Road Police Station, on

furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall attend V.P.Road Police Station once in a month on every first Saturday between 11 am and 1 pm till conclusion of trial;

(iv) The applicant shall furnish proof of his residence and mobile number to the investigating officer as soon as he is released on bail;

(v) The applicant shall not tamper with evidence and shall attend Trial Court proceedings regularly, unless exempted by the Trial Court for some reason;

(vi) The observations made in this order are only for considering this application and the Trial Court shall not influence by the same and proceed with trial in accordance with law.

(PRAKASH D. NAIK, J.)

MST