IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2654 OF 2018

Subhash L Vaid … Applicant
Vs.
The State of Respondent … Respondent
...
Ms. Saili N. Dhuru I/by Mr. Kuldeep Patil for the applicant.
Mr. A.R. Kapadnis, APP for the Respondent-State.
Mr. Minnath Khanwilkar, PSI, Malad Police Station is present.
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CORAM : PRAKASH D. NAIK, J.
DATE : 22nd JANUARY, 2019.

P.C.

1. This is an application for anticipatory bail. The applicant apprehends arrest in connection with CR No. 553 of 2018 registered with Malad Police Station for the offences punishable under Sections 420, 465, 467, 468, 471, 474, 504, 506 of Indian Penal Code. The FIR was lodged on 27th October, 2018.

2. The brief facts of the prosecution case is that the complainant is a senior citizen aged about 65 years. She is residing at Ahmedabad Gujarat. Her son is employed abroad. In 1995, the husband of the complainant had purchased three flats at Sai Shraddha Apartment, 1st Cross Lane, Bawdi Orlem, Marve

Road, Malad (West), Mumbai. The flats were purchased in the name of the informant and her husband. In 1996, the complainant and her husband had occupied the said flat and had brought furniture in the house. On 1st March, 2010, the husband of the informant had passed away and thereafter the informant was occupying the said premises. Her son was employed in America and since she was a senior citizen she left for Amhedabad. For the purpose of earning some amount for survival, the informant decided to rent out the said premises. She had rented out the premises to several persons. The earlier licensee had vacated the premises after the completion of period stipulated in the agreement and therefore in 2016 the premises were to be rented out to some other persons. In April, 2016, one of the Estate agent had contacted the informant and made inquiry with her about letting out premises on rent. Informant was introduced to another agent named Vijay Dave. The said agent had then informed the complainant that the applicant is interested in occupying the premises on leave and licence basis. Thereafter, agent Vijay Dave, the applicant and the informant had a discussion about the rent to be paid for occupying the premises. It was agreed that the licensee shall deposit an amount of Rs. 1,05,000/-

towards deposit and the rent was fixed for the first year to the tune of Rs. 35,000/- and for the second year Rs. 38,000/- and for the third year Rs. 41,000/-. The applicant agreed to pay the said amount. Hence, it was decided to execute leave and lience agreement for a period from 01.05.2016 to 30.04.2019. On 25th April, 2016 the applicant, agent Nanubhai Shah and the complainant went to the office of Sub-Registrar, Borivali for registration of the leave and licence agreement. Both the sides signed the agreement. Pankaj Shah and Vijay Dave signed as witnesses. As per the terms of the agreement, it was agreed that the licencee shall not carry out any changes in the premises. It was also agreed that the liencee shall vacate the premises in the event the licensor informs the licencee to vacate the premises three months in advance. The informant deposited cheque of Rs.1,05,000/- into her account which was handed over by the applicant. Thereafter, the applicant gave a cheque of Rs.35,000/- towards the rent for the first month which was also received by the informant. Subsequently, the complainant told the applicant to pay the rent for the month of second month to the agent. Thereafter, the applicant had stopped paying rent. The informant then contacted the applicant and told him to make the payment towards rent. At that time the applicant informant her that the premises were not in habitable condition and he was required to spend an amount of Rs. 1,00,000/-. The complainant told him to show the bills in respect to the expenditure incurred by him towards repairs and in case the applicant shows the bills towards the same the rent for a period of two months could be adjusted towards the same. However, the applicant did not present any bills in respect to the expenditure incurred by him carrying out the repairs. The cheque deposited by the complainant given towards the payment of rent was dishonoured. The complainant informed about the same to the applicant. He forwarded an amount of Rs.25,000/- by RTGS. Since July, 2016, the cheque issued by the applicant were dishonoured and it was noticed that the same were not cleared on account of stop payment instructions issued by the applicant. The applicant has also closed his bank account. The complainant thereafter initiated the proceedings under Section 138 of the Negotiable Instruments Act. In May, 2016, the complainant visited the flat premises alongwith her sister and it was noticed that the articles belonging to the complainant such as Refrigerator and three air conditioners were missing. The inquiries were made with the applicant and he informed that the articles were given to the agent. The agent thereafter gave in writing on 17th May, 2016 that he would handover the articles to the informant. In November, 2016 the son of the informant came to India and he was appraised the aforesaid facts by the informant. The notice was issued to the applicant for vacating the premises. However, the applicant did not vacate the premises. The notice was issued through advocate to the applicant. However, the applicant had forwarded the memorandum of understanding dated 9th May, 2016 which was executed on stamp paper and notorized. In the said document, it was stated that the informant had permitted the applicant to carry out the repairs with expenditure of Rs. 9,36,350/-. It is also stated that Rs.4,51,000/- has been paid to the informant by cash. The said document was notorized. However, according to the informant such permission was not granted by her to the applicant. She has not executed such memorandum of understanding and her signature has been forged.

3. Learned counsel for the applicant submitted that false complaint has been lodged against the applicant. It is submitted that the memorandum of understanding was executed between the applicant and the first informant on 9th May, 2016. The informant

is now disputing the execution of such document. Clause 10 of the MOU states that the licencee is required to carry out the renovation in the said flats and that the complainant had agreed to pay all the expenses to the applicant. It is further submitted that the dispute between the complainant and the applicant is of civil nature. The applicant has incurred huge expenses towards the renovation of the flat. As per the licence agreement, the applicant is supposed to handover the possession of the flat to the complainant after the expiry of period i.e 30th April, 2019. The complainant has initiated the proceedings before the competent authority and the order passed by the competent authority in the said proceedings has been challenged by the applicant by preferring revision application before the Additional Commissioner, Kokan Division. It is further submitted that the custodial interrogation of the applicant is not necessary.

4. Learned APP submitted that the applicant is involved in serious crime. It is submitted that the fabricated document in the nature of memorandum of understanding dated 9th of May, 2016 has been prepared by the applicant. It is submitted that the competent authority has passed order against the applicant. The claim of the applicant relying upon the memorandum of

understanding is afterthought and the said document is created to deceive the complainant who is a senior citizen. The leave and licence agreement did not stipulate the clause with regards to repairs to be carried out by the applicant.

5. The leave and licence agreement was executed on 25th April, 2016 between the first informant and the applicant in respect to flat No. C-601, 602, 603 situated at Sai-Shraddha Apartments, 1st Cross Lane, Bawdi Orlem, Marve Road, Malad (west), Mumbai 400 064. As per the agreement the licencee was permitted to occupy the premises on leave and licence basis from 1st May, 2016 to 30th April, 2019. The amount of rent be paid for the period as mentioned in the agreement was to be paid by the applicant to the complainant. As stated in the FIR, the applicant did not pay the amounts towards rent. The notice was issued to the applicant for vacating the flat premises. The applicant however claimed that he had spent money towards repairs of the premises. However, inspite of demand no bill in respect to the expenditure incurred by him were produced by the applicant. It is alleged that the applicant has relied upon the memorandum of understanding executed between the parties on 9th May, 2016. In the said MOU, it is recited that the informant has given permission to the

applicant to carry out repairs to tune of Rs. 9,36,350 and that he has paid Rs. 4,51,000/- in cash to the informant. According to the informant she has not executed such MOU and her signature on the MOU is forged. It appears that the statement of the agents were recorded and it was transpired that the flats were fully furnished with furniture. In the leave and licence agreement, there is no reference any repairs. The applicant has not produced any repair bills. The original MOU is yet to be recovered and investigation is to be conducted to trace the person who has forged the signature of the informant. The learned Sessions Judge while rejecting the application for anticipatory bail preferred by the applicant has observed that the informant had placed on record certain documents including the experts opinion obtained by her from the retired examiner of questioned document FSL and in the said opinion it is stated that the disputed signatures are not of the informant. It is also observed that the informant had forwarded the notice to the Notary calling upon the details with regards to the notirizing the said documents and notice was also issued to the advocate in whose name the stamp paper was issued. However, no response was received from the said persons. It can also be seen that the competent authority vide order dated 12th July, 2018 has directed the applicant to handover the vacant and peaceful possession of the said premises to the informant. He is also directed to pay the arrears of monthly compensation till 5th February, 2017 and double the rate of monthly licence fees being Rs.35,000/- x 2 = Rs.70,000/- i.e from 06.02.2017 till the date vacant possession of the premises is to be delivered to the informant. The applicant's contention is that the said order has been challenged before the appropriate authority. However, considering the factual matrix as stated herein above, I do not find that the applicant has made out the case for grant of anticipatory bail and hence application is required to be rejected.

ORDER

Anticipatory Bail Application No. 2654 of 2018 is rejected and disposed off.

(PRAKASH D. NAIK, J.)