IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 883 OF 2019

Nilesh Vijay Kale ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

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Mr. Sachindra B. Shetye, Advocate for the Applicant.
Smt. A. A. Takalkar, APP for the Respondent – State.
Mr. Pravartak Pathak for the Respondent No. 2.
Mr. Pravin Bakale, PSI & IO, Nashik City, present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 6th MARCH, 2020

PC :

1. This is an application for Anticipatory Bail in connection with C.R. No. I-155 of 2019, registered with Upnagar Police Station, Nashik for the offences punishable under Sections 420, 468 of Indian Penal Code, 1860 ('IPC' for short).

2. The First Information Report ('FIR' for short) was lodged by 14th March, 2019. It is alleged that, in 2011 he had sold his land at Chincholi. From the amount received in the said sale, the complainant had booked the flat with Builder-Nilesh Kale (applicant) in Sai Darshan Apartment, on the ground floor described as Flat No.1 admeasuring 850 Sq.ft. Agreement was executed. The consideration agreed upon was Rs. 13,50,000/-. On 29th November, 2011, the

complainant gave a cheque to the applicant. Subsequently, instead of handing over the aforesaid flat, the complainant represented that, he would be given flat in Sai Leela Apartment, situated at Survey No. 76 Jachak Nagar, Jay Bhavani Road and stated that at the same location two flats will be provided with the larger area. He was shown flat No. 4 and flat No. 8. The consideration for each flat was Rs.15,00,000/-. The complainant had previously given Rs.13,50,000/- and the additional amount demanded by the applicant was Rs.16,50,000/- Believing representation of the applicant, the complainant gave him and his father amount in cash from time to time. His mother had also participated in the transaction. Agreement was executed on 22nd June, 2013. It was stated that, the construction would take 2 to 3 years. After receipt of Completion Certificate, the registered Sale Deed was to be given to the complainant. On enquiry, it was stated that, the Completion Certificate is not received and complainant will have to wait. Although, the attempts were made to contact the applicant, he did not respond. Written letter was forwarded to him,which was not responded. The complainant repeatedly approached the applicant and demanded the possession of the flats booked by him. However, he gave excuses. In November, 2018 he made enquiry at the place of construction and it was found that, the applicant had executed transaction of the flat with third person and sold the same to that person. The applicant also assured brother of the complainant Vishwas Mahadev Gandhas that flat would be provided to him. Agreement for Sale was prepared and the amount received by cash/cheque to the tune of Rs. 10,00,000/- and even he was not given possession of the flat. Thus, according to the complainant and his brother, they were induced to part with an amount on the promises of the sale of flat and the flats were sold to third person. Thereby, they were cheated.

3. The applicant preferred an application for Anticipatory Bail, before the Sessions Court, the said application was rejected.

4. Heard, learned counsel for the applicant, learned APP and learned counsel for the complainant/respondent No. 2.

5. Learned counsel for the applicant submitted that the claim of complainant is false. The applicant has been falsely implicated in this case. The applicant has co-operated with the investigation. There is delay in lodging FIR. The dispute is of commercial nature. There is no element of cheating or breach of trust. The agreements were executed by way of security. The transaction was relating to amount borrowed by the applicant. The entire amount has been returned. The custodial interrogation of the

applicant is not necessary. The matter relates to documents. The money transaction has been converted into criminal prosecution. The complainant is in money lending business. Vishwas, Baban Gandhas are brothers of the complainant. Rahul Gandhas and Shraddha Kange are children of Vishwas Gandhas. Shraddha Kange is working in Police Department. Vinod Bodake is cousin of Rahul and Shraddha. The applicant was acquainted with Rahul Gandhas. The applicant was in construction business. He was in need of loan, which he could obtain from people. This was known to Rahul. In 2011, he introduced the applicant to complainant for obtaining loan. The complainant informed that he is government servant. In 2011, the applicant obtained hand loan of Rs. 13,50,000/- at the interest of 18 per cent from the complainant. The document relating to the flat was executed only for the purpose of security. The parties never had any intention of entering into a sale transaction. Rs. 3,50,000/- was given by way of cheque and the rest of amount was not deposited in the applicant's account. The applicant would borrow money from complainant from time to time against the security of documents of flats. Rahul Gandhas is witness to the agreement dated 19th June, 2014 between Rajaram and Veena Pai with Dudhedia Builder. Up to 2013, the total amount received by the applicant vide cheques from the complainant and his family members towards loan amount is

Rs.63,75,000/- In 2012-2015 the applicant following direction of the complainant, transferred an amount of Rs. 92,33,000/- to his nephew, Rahul Gandhas. The reason given for it by the complainant was that he was government servant and he could not accept money directly. The remaining amount of Rs. 10,00,000/- due, to be repaid, was transferred by the applicant directly to the complainant by RTGS. Despite the repayments of the money along with interest, totalling to Rs.1,02,33,000/-, the complainant threatened the applicant to extort more money. The applicant relied upon the bank statements. It is submitted that since the applicant received threats from the complainant on 25th February 2019, notice was issued through Advocate by the applicant. The applicant also complained to police on 28th February, 2019. The reply was sent by the complainant on 6th March, 2011 opposing the claims of the applicant. According to the applicant, the entire amount has been returned by him. Learned counsel for the applicant submitted tabular form giving details about the amount received by him and credited by him.

6. Learned APP submitted that the false promises were made by the applicant. Agreements were executed with complainant. The contention that, the agreement relating to the properties, were executed by way of security, towards the loan is false. There were no need of executing such documents. The properties were specified in

the agreement. The property was sold to the third party after the agreement were executed with the complainant and his brother. Huge amount is accepted towards sale of flats. The promises were not fulfilled and the premises were sold to another person. Inducement was made by the applicant with false promises. The offences are clearly made against the applicant. The statement of owner was recorded, which indicates that the applicant had no right to sell the property. The Power of Attorney do not give right to sell the property. Learned APP relied upon the affidavit-in-reply filed by the prosecution opposing the relief prayed in this application. It is stated that, the applicant has executed agreement with the complainant. The owner of property had executed Power of Attorney in favour of applicant on 19th March, 2013, only to represent that the applicant have right for presentation of document before the Government Authority and he had no right to sale or receive any money. Rahul Gandhas in his statement stated that the applicant was his friend and he is Builder/Developer. He was working with the applicant. He transfer cash in his account for business. The applicant also received money through bank account. Statements of witnesses were recorded. During investigation, bank statements of applicant were recovered. It is submitted that custodial interrogation of the applicant is necessary. Learned APP pointed out the agreements, statement of witnesses and statement of employees.

7. Learned counsel for the intervenor submitted that the contentions of the applicant are false. He relied upon the agreements for sale in respect to the property. There is nothing to show that the agreements were executed by way of security for payment of loan. The agreement do not indicate that the same were executed as security. The amount was parted to the applicant. He drew my attention to the reply to the notice send by the complainant and addressed at the instance of the applicant. He pointed out the clauses of the agreement do not specify that it being executed for security. He stressed on the modus of the applicant in executing such transaction.

8. I have perused the documents. FIR was lodged on 14th March, 2019. The transaction of flat was executed in 2011. According to the complainant, he parted an amount of Rs. 13,50,000/- towards consideration. Subsequently, the complainant gave Rs. 16,50,000/- in 2013 and thereby he had paid Rs.30,00,000 to the applicant. According to the complainant in 2018, he learnt that the flat is sold to third person. Hence, lodged the FIR on 14th March, 2019. According to the complainant, his brother Vishwas Gandhas was also induced to part with Rs. 10,00,000/- and thereby

they were deceived. The applicant through his advocate forwarded notice dated 25th February, 2019 to the complainant stating that, the agreements were executed by way of security. The applicant was in need of money in 2011 and that Rahul Gandhas requested for loan. However, he contacted the complainant, thereafter demand of Rs. 15,00,000/- was made towards the loan with the complainant. Subsequently, the applicant was informed by Rahul Gandhas that the complainant is willing to give an amount of Rs. 13,50,000/- with interest at the rate of 18 per cent by way of security. The applicant was requested to execute the agreement in respect to Sai Darshan project. On reading the clauses of the agreement, stipulated in Clause 7-A, C and D, it is clear that the amount was parted towards that agreement executed towards interest. It was also mentioned that the complainant had directed the applicant to deposit the amount in the account of Rahul Gandhas. The amount had been credited through cheque or RTGS in the account of Rahul Gandhas. The reply was forwarded to the applicant at the instance of complainant on 6th March, 2019. The contention in the notice were denied. It was also stated that the complaints were made to the police. The said reply is however silent with regards to the amount credited at the instance of the applicant in the account of Rahul Gandhas. The advocate for the applicant forwarded reply in re-joinder dated 11th March, 2019 reiterating his contentions. The FIR was registered on 14th March, 2019. In the FIR, there is no allegation, no evidence of forgery of documents. The applicant has admitted to have received the amount of Rs.63,75,000/-. He has provided the statements, giving details about the amount received by him from Vishwas Gandhas, Suresh Gandhas, Baban Gandhas and Vinod Bodake, who are related to Rahul Gandhas. The amount was received by cheque. The details of the cheque are mentioned. According to the applicant, he had received Rs. 3,50,000 from Vishwas Gandhas, Rs. 21,50,000 from Suresh Gandhas Rs.26,50,000/- from Baban Gandhas and Rs. 12, 25,000/- from Vinod Bodake. All of them are related to each other. The applicant has also furnished the details about the amount credited by him. According to him he had paid Rs. 5,00,000/- by RTGS on 26th October, 2015 to Suresh Gandhas. According to him, he has parted an amount of Rs. 92,33,000/- to Rahul Gandhas. Thereby the applicant has parted Rs. 1,02,33,000/-. Although, the transactions were of 2011-13, the FIR was lodged in 2019. The applicant was granted protection by this Court vide Order dated 16th April, 2019. He was directed to mark his presence with the Investigating Officer. The applicant has complied the direction. The matter relates to document. In the facts and circumstances, and in view of the aforesaid observation, custodial interrogation of the applicant is not necessary.

9. Hence, I pass the following the Order:

<u>O R D E R</u>

i) Criminal Anticipatory Bail Application No. 883 of 2019, is allowed and disposed of by confirming interim order dated 16th April, 2019;

ii) In the event of arrest of applicant in C.R. No. I-155 of 2019, registered with Upnagar Police Station, Nashik the applicant be released on bail on furnishing P. R. Bond in the sum of Rs.50,000/-, with one surety in the like amount;

iii) The applicant shall report the Investigating Officer as and when called for till filing of charge-sheet.

(PRAKASH D. NAIK, J.)