IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2714 OF 2019
WITH
INTERIM APPLICATION NO. 161 OF 2020
IN
ANTICIPATORY BAIL APPLICATION NO. 2714 OF 2019

Prakash Sakaram Gaikwad …. Applicant
v/s.
The State of Maharashtra …. Respondent

Mr. Kuldeep Patil i/b. Mr. Samadhan A. Kashid for the Applicant.
Mr. Ajay Patil, APP for the State.
Ms. Rekha Musale for the Intervenor.

CORAM: SARANG V. KOTWAL, J.

DATED : 28th SEPTEMBER, 2021.

P. C. :-

. The Applicant is seeking Anticipatory Bail in connection with C.R.No.408/2019 dated 05/09/2019 registered with Mangalwedha Police Station for offences punishable under Sections 420, 406 of the Indian Penal Code.

2. Heard Mr. Kuldeep Patil, learned counsel for the Applicant, Mr. Ajay Patil, learned APP for the State and Ms. Rekha Musale, learned counsel for the Intervenor.

3. The Applicant was protected by an order dated 17/12/2019. When that order was passed, it was submitted that the Applicant would make an attempt to resolve the dispute with the bank by depositing some amount and clear the subject property from encumbrances. The Applicant had also undertaken to file an affidavit on the next date of hearing to point out as to what steps were taken by the Applicant to secure the interest of the complainant and with regards to the negotiation with the bank.

4. After about almost two years, no steps were taken by the Applicant. No affidavit is filed and the Applicant has enjoyed this interim relief. The Applicant's conduct is definitely not bonafide.

5. The First Information Report (for short 'the FIR') was lodged by one Bilyani Nagappa Kambale on 05/09/2019. He has stated that the informant had purchased the land at Gat No.144/2 at Village Jangalagi from the Applicant and Udaybhan Bhosale, on 31/01/2015, by a registered sale deed. The consideration was fixed at Rs.3,00,000/- which he had paid. The document was registered on 04/02/2015. The Applicant and Udaybhan Bhosale had given the 7/12 extract in respect of the land wherein they were mentioned as the owners of that

property. There was no mention of any other encumbrances in respect of that property. The informant's name was entered in the mutation entry No.1238 dated 10/02/2015. The Applicant approached the Revenue Authority to get the copy of the 7/12 extract. At that time, the Circle Officer showed him that there was encumbrances in favour of HDFC Bank, Pandharpur in that Gat No.144/2 admeasuring 1H 82R. This fact was noted in the records. It was mentioned that the Applicant had taken loan from that Bank. The informant was told that unless the loan was repaid by the Applicant, the informant's name could not be entered into revenue records. The informant came to know that the Applicant and others had obtained the loan of Rs.18,00,000/- from the said bank. That was done on 30/01/2015 and yet the document was executed with the present first informant on 31/01/2015 by concealing this fact. The informant was cheated. Based on these allegations, the FIR was lodged.

6. Mr. Kuldeep Patil, learned counsel for the Applicant submitted that the property was a joint property of the Applicant and his brothers. His brothers were not willing to repay the loan. There were two loan amounts viz., Rs.8,00,000/- and Rs.10,00,000/- out of which the amount of Rs.8,00,000/- was repaid with interest and the loan amount

of Rs.10,00,000/- is still unpaid. Learned counsel for the Applicant submitted that the Applicant could make efforts to repay that loan and remove encumbrance on that land.

7. Mr. Ajay Patil, learned APP opposed this Application. He submitted that the offence is clearly made out and custodial interrogation of the Applicant is necessary to find out the details of the offence.

8. Ms. Rekha Musale, learned counsel for the Intervenor submitted that the Applicant has not tried to take steps for a period of almost two years from the date of FIR and inspite of order of this Court in December, 2019. The informant has lost his money and has not got his land. She, therefore, opposed this Application.

9. I have considered these submissions. As mentioned earlier, the Applicant did not take any steps as stated in the order passed by this Court (Coram : Prakash D. Naik, J.) dated 17/12/2019 and has not complied with the order. The conduct and intention of the Applicant do not appear to be bonafide. In any case, the offence is clearly made out in the FIR. The Applicant had taken loan and the encumbrance

was made in favour of HDFC Bank on 30/01/2015 and on the very next date i.e., on 31/01/2015, the transaction with the informant was entered into. Obviously, the Applicant was aware of the factual situation. His dishonest intention from inception is obvious.

10. Considering all these aspects, no case is made out for grant of Anticipatory Bail. Application is rejected.

11. I have heard the learned counsel for the Intervenor. With the rejection of Anticipatory Bail, nothing survives in the Interim Application and is disposed of accordingly.

(SARANG V. KOTWAL, J.)

PREETI
H JAYANI

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