

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.97 OF 2021

1. Sachin Laxman Parab, age 40 years,
r/o.Mumbai.

2. Samiksha Sachin Parab, age 38 years,
r/o.Mumbai.

3. Shilpa Sivram Parab, age 48 years,
r/o.Mumbai.

Applicants

versus

The State of Maharashtra and another

Respondents

Ms.Lucy Massy for applicants.

Mr.Abhijeet Patil for Respondent no.3.

Mr.A.R.Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th March 2021

PC :

1. This is an application for anticipatory bail in CR No.478 of 2020 registered with Manpada Police Station for offence under Section 452 r/w 34 of Indian Penal Code. The FIR was registered on 25th November 2020.

2. The complainant has alleged that she had purchased a flat jointly with her husband viz Flat No.903-E, Premia, Palava, Khoni, Dombivili (East). The complainant has been paying loan installments. The husband of the complainant expired on 17th June 2020. On 30th October 2020 the complainant visited her flat at Palava and it was noticed that unknown persons are occupying the same. The applicant no.1 informed that the flat was sold to him by

complainant's husband and he had executed a transaction with him. The complainant alleges that her husband never informed her about such transaction. The flat stands in the name of complainant as well as her husband. The complainant questioned the applicant no.1 as to how the transaction could only be with her husband. It is further alleged that the premises was rented out to a licensee and he was supposed to vacate the premises. The applicant no.1 and his family members had trespassed into the flat premises. Pursuant to registration of FIR, investigation had commenced.

3. The applicants preferred application for anticipatory bail before the Court of Sessions. The said application was rejected vide order dated 10th December 2020. While rejecting the said application learned Sessions Judge had observed that memorandum of understanding (MOU) relied upon by applicants nowhere mentions that possession of the flat is given by the informant's husband to applicant no.1. There is no documentary evidence produced to show that informant's husband at any point of time gave possession of the flat to any of the accused. The MOU shows that informant's husband had agreed to sell the flat to accused no.1 and it is also mentioned that from time to time amount of Rs.18 lakh is received and the balance amount of Rs.12 lakh is to be paid within seven years. However, there is nothing to show that informant's husband had authority to sell the flat since it was purchased jointly in the name of informant and her husband. The investigating officer produced copy of Annexure-II of the flat which indicate that it is purchased in the name of informant and her husband and the consideration price mentioned therein is Rs.46,22,512/-. The flat was purchased by registered agreement in the joint name.

4. The contention of the applicants is that the MOU was executed between applicant no.1 and informant's husband on 23rd December 2019. The copy of MOU has been annexed to this application. The MOU mentions that the amount of Rs.18 lakh was paid to informant's husband in cash and cheque. The MOU was allegedly executed on 23rd December 2019. Most of the payments reflected therein are prior to execution of MOU. It is submitted by learned counsel for applicant that applicant no.1 was put in possession by informant's husband. The amount of Rs.18 lakh was parted by applicant no.1. The dispute relates to possession of the property which is civil nature. Applicant no.1 has filed suit in the Court which is pending. The possession was given to the applicant no.1 in July-2020 along with access card and key of flat. It is further submitted that issue relating to validity of MOU will be decided in Civil Court. The applicants need not be subjected to custodial interrogation. The amount paid by the applicant no.1 has been credited into the account of complainant's husband. Additional affidavit of applicant no.1 is filed relying upon MOU and other documents. It is submitted that value of the flat is not Rs.46 lakh which is evident from the document relating to flat situated in the area. It is submitted that the bank statement of applicant no.1 reveals transfer of amount to husband of complainant. The copy of bank statement has been annexed to the affidavit.

5. Learned APP submitted that during investigation it was revealed that the amount as contended by applicant no.1 has not been credited into the account of informant's husband. Complicity of the applicants is disclosed during the course of investigation.

6. Learned counsel for intervenor submitted that the claim of the applicants is false. The complainant and her husband were joint owners of the property. The MOU ought not to have been executed between single owner and applicant no.1. The applicants are illegally occupying the property. They have committed criminal trespass. There is no cogent evidence to show that amount of Rs.18 lakh have been received by the informant's husband. It is submitted that the MOU indicates that amount of Rs.18 lakh is paid by applicant no.1 and Rs.12 lakh were to be paid within a period of seven years. Transaction is illegal. It is further submitted that in the application the applicants have contended that the informant's husband had handed over peaceful possession of the property in July-2020. It is submitted that statement is patently false. The husband of the informant has expired due to brain hemorrhage on 17th June 2020. The question of handing over possession in July-2020 does not arise. It is also submitted that value of the flat is around Rs.46 lakh. It was the purchase amount which is reflected in the agreement to sale executed between the informant, her husband and the seller of said flat. It is difficult to accept that flat will be sold for a consideration of Rs.30 lakh.

7. Having heard both the sides I have perused the documents on record. Applicant no.1 claims that the MOU was executed on 23rd December 2019. The flat was sold to him by informant's husband for consideration of Rs.30 lakh. The document is notarized. It is pertinent to note that flat was owned by informant and her husband jointly. It is difficult to accept that flat will be sold by MOU without the consent of complainant. The applicant no.1 is relying upon vouchers dated 23-7-2019, 14-8-2019, 27-8-2018, 11-9-2019, 23-12-2019. Except voucher dated 23-12-2019, all the cash vouchers are

prior to the execution of alleged MOU. The vouchers did not indicate as to for what purpose the amount was paid to informant's husband. The applicants are also relying on a cheque issued in the name of informant's husband for Rs.1.45 lakh. The investigation revealed that no amount has been transferred to the account of informant's husband. It is also difficult to believe that property valued at Rs.46 lakh was sold for Rs.30 lakh, that too amount of Rs.12 lakh was to be paid within a period of seven years. In the circumstances, the contention of applicant no.1 cannot be accepted. The allegation against applicants is that all of them had entered into the premises owned by the complainant and they continued to occupy the flat.

8. The MOU was allegedly executed with applicant no.1. He has played vital role. Applicant no.2 is wife of applicant no.1 and applicant no.3 is sister of applicant no.1. it is alleged that applicant nos.2 and 3 are also occupying the said premises and they have connived with applicant no.1.

9. Considering the overt act attributed to the applicant no.1, no relief u/s 438 of Cr.PC can be granted to him. However, although applicant nos.2 and 3 are allegedly occupying the premises and had connived with applicant no.1, considering the fact that MOU was allegedly executed with applicant no.1 and applicant nos.2 and 3, they need not be subjected to custodial interrogation.

10. Hence, I pass following order :

ORDER

(i) Application of applicant no.1 Sachin Parab stands rejected;

(ii) In the event of arrest of applicant nos.2 and 3 in connection with CR No.478 of 2020 registered with Manpada Police Station, the applicant nos.2 and 3 be released on bail on their executing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

(iii) The applicant nos.2 and 3 shall attend the Investigating Officer as and when called for.

11. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

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