PMB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.228 OF 2020

Sudarshan Yellaiah Pathipaka .. Applicant
vs.
The State of Maharashtra .. Respondent

Mr. Niteen Pradhan a/w Mr. Ashok Kumar Mishra a/w Madhuri Amare Machado a/w Tanvi Tapkire I/b. Solicis Lex for the Applicant.
Mr. N.B. Patil, APP for the State.
Mr. Narendra Mohan Patil, Police Inspector (EOW, Thane City), Narpoli Police Station present.

CORAM : M.S.KARNIK, J.

DATE : SEPTEMBER 28, 2021

P.C.:-

Heard Mr. Niteen Pradhan, learned counsel appearing for the Applicant and Mr. N.B. Patil, APP appearing on behalf of the Respondent-State.

2. The Applicant was arrested on 01.09.2018 for the offences punishable under Sections 406 and 420 of the Indian Penal Code (‘IPC’ for short) registered with the Narpoli Police Station in respect of C.R. No.I-299 of 2017.

3. The FIR is dated 04.07.2017. The Applicant was arrested while he was in custody in respect of an alleged commission of another offence.

4. The first informant, Mr. Nimish Rajnikant Trivedi alleged that he was informed through a common friend that the Applicant owns several godowns in Bhiwandi. The first informant was told that if he purchased the godown from the Applicant, the Applicant will in turn rent/lease the godown to prospective tenants/lessees thereby fetching handsome amount of rent. Accordingly, the document which is in the nature of a sale deed dated 31.03.2009 came to be executed in respect of RCC godown No.105, on first floor, admeasuring 2880 sq. ft. in the building No.A/18 along with undivided common interest in the land beneath the godown, the details are at page No.101 of the paper book. Along with the registered sale deed a document is annexed which records that the peaceful possession of the said godown is handed over by the Applicant to the first informant.

5. It is the first informant's case that though the first informant paid the entire consideration as mentioned in the sale deed to the Applicant, the possession of the godown was not handed over to the first informant. It is further alleged that

neither the possession is handed over nor the money was refunded though repeated requests were made from time to time. Later on, it was revealed that the godown in fact belongs to one Mr. Anand Patil and the Applicant had no concern with the said land in question as is the submission of learned APP.

6. Mr. Pradhan, learned counsel invited my attention to the supplementary statement which came to be recorded on 09.04.2018 almost after a period of nine months from the date of lodging of the FIR. Mr. Pradhan submitted that in the said supplementary statement, the first informant narrates a different story altogether.

7. Learned APP vehemently opposed the Application and submitted that the Applicant has cheated other persons as well and the criminal cases are pending against the Applicant in respect of which the Applicant has been arrested.

8. From the FIR as well as the supplementary statement, it is seen that the allegations are in respect of the godown which the first informant promised to sell, but the possession of which was not handed over despite the first informant paying the entire consideration amount. The supplementary statement reveals

that pursuant to the sale, the Applicant helped the first informant let out the godown on leave and license basis to M/s. Bluebird (India) Ltd for a rent fixed at Rs.27,000/- per month. The first informant says that the rent for a period of three months was paid but thereafter rent was never paid. It is only after the first informant made further inquiries when it was revealed that the company paid the rent to one Mr. Anand Patil, who claimed to be the owner of the godown. This was some time in the year 2009. Further enquiries made by the first informant revealed that the Applicant had cheated other persons as well in a similar fashion as they had also purchased godowns from the Applicant and met the same fate as the first informant.

9. The registered sale deed is of the year 2009 and the offence was registered as late as in the year 2017. The allegation essentially is that the property which did not belong to the Applicant is sold by him to the first informant for a substantial consideration to the tune of Rs.25,05,000/-, on record, however, only an amount of Rs.3,88,800/- is shown as the consideration amount and the rest amount is paid by cash. The offences which the Applicant is alleged to have committed are under Sections 406 and 420 of the IPC, the maximum sentence for the offence punishable under Section 406 of the IPC is three years and that

for the offence punishable under Section 420 of the IPC the maximum sentence prescribed is seven years. The Applicant was arrested on 01.09.2018 and he has been in custody for a period of more than three years and there is nothing on record to indicate that the trial is likely to commence anytime in the near future.

10. In this view of the matter, considering the facts and circumstances of the present case, and as the Applicant is in custody for more than three years, in my opinion, the Applicant deserves to be released on bail.

11. Hence, the following order :-

O R D E R

(i) The Applicant be released on bail in respect of C.R. No.I-299 of 2017 registered with Narpoli Police Station on his furnishing P.R. bond in the sum of Rs.50,000/- with one or more sureties in the like amount.

(ii) The Applicant to report to the Investigating Officer once a month viz. on first Saturday of the month between 11.00 a.m. to 12.00 noon.

(iii) The Applicant to furnish details of his residential address and telephone number.

(iv) The Applicant not to tamper with the witnesses or attempt to contact them.

12. The Bail Application is disposed of.

(M.S. KARNIK, J.)