

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.424 OF 2020

Basantkumar Kapoorchand Jain .. Applicant

Vs.

The State of Maharashtra .. Respondent

ALONG WITH
INTERIM APPLICATION NO.806 OF 2020

Mahesh Kartar Bijlani .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Niranjan Mundargi with Mr. Veerdhawal Deshmukh i/b Mr. Kunal D. Ambulkar for the applicant.

Mr. S.H. Yadav, A.P.P. for the State.

Mr. Niranjan Bhavake for the Intervenor.

Mr. V.M. Dhumal Nigdi, API, the Investigating Officer is present in the court.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 04TH DECEMBER, 2021.

P.C:-

1. By this anticipatory bail application, the applicant is seeking his release, in the event of his arrest, in C.R. No.14 of 2019 registered with Nigdi Police Station on 4/01/2019 thereby invoking offences punishable under Sections 406, 420, 467, 468 and 506 of the IPC. The said offence is registered at the instance of the informant Mahesh Kartar Bijlani, who has filed an application for intervention along with the necessary documents on record.

2. Heard Mr. Mundargi, learned counsel for the applicant and Mr. Bhavake, learned counsel for the intervenor and Mr. Yadav, learned A.P.P. for the State.

3. The FIR, which is lodged on 04/01/2019, relates back to the events commencing from the year 1986 and it makes a reference to a transaction entered into between the uncle of the complainant Kanhaiyalal Bijlani, who came in contact with the applicant Basantkumar Jain, who is alleged to have established a housing society styled as Telco Kapoor Sahakari Gruharachana Sanstha by obtaining lease of 1 hectare of land from Sector 24 of Nigdi Municipal Corporation for a period of 99 years. The said

parcel of land was divided into plots and made available for sale. This prompted the uncle of the applicant to invest into a plot by depositing the membership fees on 18/02/1986 and on 06/08/1990, it is alleged that an amount of Rs.3 lakhs was deposited with the Chairman/Secretary of the said Society i.e. the present applicant in lieu of sale of plot No.43. However, the allegation is that Kanhaiyalal repeatedly asked for handing over of the possession of the said plot, but it was evaded and Kanhaiyalal passed away in the year, 1994 and the present complainant along with his brother Dhiraj claimed to be his only legal heirs. The allegation is that they persuaded the Chairman of the Society to make over plot No.43, but again it was avoided.

4. In January, 2017, it is alleged, that the applicant visited their shop and on the pretext that he would like to exchange the said plot for plot No.1 he scribed a receipt by erasing mention of plot No.43 and substituting it as plot No.1. On being asked as to why the change is being effected, the response was that plot No.1 is more suitable and he would be able to deliver possession of plot No.1 immediately. In the year 2018, when there was a press conference held for exposing of the misdeeds of the Society, the complainant participated and he realized that plot No.43 was already allotted to one Vikram Jain and as regards plot No.1 a temple and an electric transformer are standing on the said plot. It is at this point of time, it was revealed that the other persons have also been duped by accepting the amount and

the names of the persons are also set out in the complaint.

5. In the backdrop of the aforesaid allegation, my attention is invited to an agreement dated 06/08/1990 which is placed by the applicant on record, which is an agreement between Kanaiyalal in the capacity as “owner” and the applicant - Basantkumar Jain as the “Developer/Purchaser”. This agreement is in respect of the property mentioned therein, which was a land at village Vadgaon, Tal. Haveli, District Pune and the owner, being the highest bidder, was held entitled for the said property under the Displaced Persons Compensation & Rehabilitation Act, 1954 and the said certificate was issued in his favour. The agreement depicts that the owner agreed to receive a consideration of Rs.12 lakhs for assigning the property to the developer/purchaser and an amount of Rs.50,000/- was already received as the earnest money and receipt was also given. The amount of Rs.3 lakhs was concerned, it was agreed to be given in the form of transferring a plot of Telco Kapoor Co-op. Housing Society, Nigdi and the schedule of remaining payment was set out. The said agreement contained a specific clause in the form of clause No.2 where it was agreed to the following effect:

“2. The Developer/Purchaser will pay Rs.3,00,000/- (Rupees Three Lacs only) within three months from the date of getting possession of the said property or alternate property to the owner and the owner will resign

from the Telco Kapoor Co-op. Hsg. Society Ltd. And hand over the vacant possession of the property plot no.43, Sector No.24, Bulk Land GY, Pimpri Chinchwad New Town Development Authority, Nigdi, Pune 411 044 to Developer/Purchaser.”

6. The aforesaid agreement reflects a completely distinct story than what is projected by the complainant and, the documents, which are placed on record, will have to be *prima facie* believed. As far as the right of the complainant to claim from Kanhaiyalal, it is based on a Will which is also placed on record and the Will executed on 03/04/1989 when carefully read, does not find mention about the said property. In any case, the claim of the complainant that the plot was to be allotted to his uncle on becoming a member of the Society and the consideration of Rs.3 lakhs came to be paid on the said plot, *prima facie* does not appear to be the correct version. In any case, the FIR is registered on the basis of the events, which relate back to the year 1986 and it is registered in the year 2019.

7. In the aforesaid background, the applicant was directed to report to the police station when he was admitted to interim protection by order dated 25/02/2020. The submission of the learned A.P.P. is that the applicant has accordingly abided by the terms and conditions of the said order and has rendered his co-operation in the investigation. The offence was initially transferred to EoW and, for some period of time, it was

investigated by EoW and, later on, it was re-transferred to the concerned police station and learned A.P.P., on instructions from the Investigating Officer, states that on completion of investigation, the charge-sheet will be filed within two weeks from today.

8. I have heard learned counsel for the intervenor, who has relied upon a letter addressed by the applicant to him in the year 2013, and, to be specific, on 26/02/2013, where there is a clear cut admission that the plot is ready for delivery. The perusal of the said letter would reveal that contain a mention of allotment of the plot, but that has to be read in context of the agreement, which was entered into with Kanhaiyalal, which is not disputed by the complainant/intervenor.

9. Before I pass the order releasing the applicant on bail, in the event of his arrest, I must make a mention about the approach adopted by the intervenor. An intervention application, which is filed, when perused, is accompanied by some documents/papers of investigation which include statements of some witnesses recorded during the course of investigation. It is surprising as to how the intervenor has been able to get custody of the said documents, when the investigation is still going on and the charge-sheet is not yet filed. This surely indicates some lapse on the part of the investigating agency and an overzealous approach to protect the interest of the complainant because the concerned

officer has gone out of his way. This, in my considered opinion, is a serious lapse on their part and, in such circumstances, I direct the Commissioner of Police, Pimpri-Chinchwad, Pune, to conduct an enquiry into the aforesaid aspect and take appropriate action against the concerned police officer, who has gone out of the way to assist the complainant. I can merely hope and trust that the Commissioner of Police conducts an impartial enquiry and take action against the concerned police officers by proceeding departmentally since such act of few police officers, in fact, tarnishes the image of the entire Police Department. I need not say anything more.

10. In the aforesaid circumstances, the applicant, in my considered opinion, is entitled for continuation of the interim protection subject to the following conditions:

: ORDER :

- (a) In the event of arrest, the applicant – Basantkumar Kapoorchand Jain, shall be released on bail in C.R. No.14 of 2019 registered with Nigdi Police Station, District Pune on executing P.R. bond to the extent of Rs.25,000/- each and furnishing one or two sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any

person acquainted with facts of case and shall not tamper with prosecution evidence.

- (c) The applicant shall report to Nigdi Police Station as and when called for by the investigating office.

11. The anticipatory bail application is allowed in the aforestated terms.

12. All parties are directed to act on the downloaded copy of the order supplied by the advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]