IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.571 OF 2021

Sumit Ramesh Musale ... Applicant
versus
The State of Maharashtra ... Respondent

Mr.Shriram Kulkarni i/by Sujay Palshikar for applicant.
Mrs.Anamika Malhotra, APP, for State.
Mr.Narendra Mohan Patil, P.I, EOW, Thane City, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th April 2021

PC :

1. The applicant is apprehending arrest in CR No.I-248 of 2017 registered with Shivaji Nagar Police Station for offences under Sections 420, 34 of Indian Penal Code. The FIR was registered on 16th September 2017.

2. The complainant has alleged that her family was in need of house. The accused Amit Musale and Sumit Musale were builders. They used to visit the shop of complainant's family and were known to them. In September-2015 Amit Musale visited the shop of complainant. He was informed by the father-in-law of the complainant Mr.Ramesh Murbadkar that they are in need of a flat. Amit Musale informed them that they are constructing a building of ground+3 floors and the construction is in progress. They can book a flat in the said building. The father-in-law of the complainant had discussion with complainant's husband about the aforesaid

discussion with Amit Musale. Thereafter complainant, her mother-in-law, father-in-law visited the place of construction. They noticed that a building namely Balaji Krupa was being constructed on Survey No.9133, Plot No.261, behind Navare Nagar Police Station, OppJondhale Colony. They were shown the said building by accused Amit Musale. Thereafter Amit Musale and Sumit Musale visited the shop of complainant. They informed that price of Flat is Rs.20 lakh. It was also agreed that on payment of Rs.13 lakh registration of document would be carried out and the balance amount was to be paid on obtaining loan from bank. In accordance with the oral understanding between the parties, the complainant gave a cheque dated 10-10-2015 for Rs.5 lakh in the name of Sumit Musale (applicant). Receipt about the said payment was issued to the complainant. Thereafter on 5-11-2015 amount of Rs.1 lakh was paid in cash towards purchase of flat. Payment receipt was issued. On 18-11-2015 cheque for Rs.5 lakh was issued in the name of Sumit Musale and payment receipt was also issued by the accused. Thereafter Rs.2 lakh was paid in cash on 20-11-2015 and the payment receipt in that regard was issued by the accused. Thus, Rs.13 lakh was paid to the accused. The balance amount was to be paid on obtaining loan from bank. The complainant and her family members then insisted upon the accused to register the document. However, accused avoided registration of document. Since the document regarding sale of flat was not registered, the complainant could not obtain loan from bank. Amit Musale and Sumit Musale avoided registration of sale agreement from 2015 to 2017. The complainant's family suspected the conduct of accused. On enquiry it was revealed that accused had cheated Kanhiyalal Waghela and an offence has been registered by him with Shivaji Nagar Police Station.

The complainant's family approached Kanhiyalal Waghela and made enquiry about his transaction. They were informed that accused had entered into transaction with Mr.Waghela in the building named Balaji Krupa in respect to flat situated on ground floor bearing No.001. Same flat was sold to the complainants. FIR was registered against accused on 16-9-2017. Supplementary statement of the complainant was recorded on 20-9-2017. The complainant has placed on record receipts in respect to payments made to the accused towards purchase of flat. The receipts mentions the description of Flat as Flat No.G-01. The receipts were signed by the applicant-accused.

3. The co-accused Amit Musale was arrested during the course of investigation. He preferred application for bail which was allowed by order dated 24-12-2018. The complainant had preferred application for cancellation of bail granted to Amit Musale. The application for cancellation of bail was rejected by Sessions court by order dated 8-11-2019. The applicant preferred application for anticipatory bail before Court of Sessions. The said application was rejected by order dated 27-6-2019. The applicant thereafter preferred another application for anticipatory bail before Sessions Court which was rejected by order dated 16-12-2020. Thereafter applicant preferred third application for anticipatory bail before Sessions Court. The said application was also rejected by order dated 15-2-2021. Pursuant to that the applicant has approached this Court seeking anticipatory bail.

4. Learned advocate for applicant submitted that the applicant has been falsely implicated in this case. The case of the complainant

is false. The complainant has suppressed vital facts. The co-accused Amit Musale who is attributed prime role, was arrested and he has been granted bail by the Court. Application for cancellation of bail granted to Amit Musale preferred by the complainant has been rejected by the Court. The dispute is purely of a civil nature. Custodial interrogation of the applicant is not necessary. The applicant is willing to co-operate with investigation. The father-in-law of the complainant is a money lender. He had previously financed the applicant and his brother who are conducting their business through partnership firm M/s.Balaji Associates. The finance was granted for the purpose of construction. By way of security the document was executed in favour of one Ashok Mahajan. The husband of complainant was witness to the said transaction. After repayment of the said loan amount, cancellation of deed was executed which was signed by the father-in-law of the complainant. The firm of the accused again required money for business. The applicant and the co-accused met father-in-law of the complainant. For the purpose of availing loan, the complainant's husband had obtained blank receipt of the firm showing advance given after booking of flat and on that receipt, the husband of complainant made payment of Rs.13 lakh by deducting 5% interest along with expenditure from the account of complainant and transferred it to applicant's firm. The complainant and her husband had insisted that their financer require document as security. Hence registered agreement was executed in respect to shop bearing registration No.4051/2016 on 11-4-2016 for consideration of Rs.15 lakh. Subsequently the loan was cleared and receipt dated 2-5-2017 was executed. The complainant assured that original receipt of Balaji Associates and registered cancellation deed would be returned. The complainant refused to cancel the agreement for sale and misused the security receipt with an intention to grab the property of Balaji Associates. The complaint was filed by father of the applicant with Ambarnath Police Station on 16-5-2017. The Police refused to take cognizance of the complaint. Hence private complaint was filed. Learned Magistrate directed Shivaji Nagar Police Station to register offence against complainants and others. The accused in the complaint lodged by the father of complainant preferred application for anticipatory bail which was allowed by Sessions Court. The father of applicant and Balaji Associates have filed a civil suit bearing Special Civil Suit No.231 of 2017 for cancellation of agreement dated 11-4-2016 registered at Ulhas Nagar and injunction was sought. The Civil Court directed the defendants to maintain status-quo in respect to suit property.

5. It is submitted that entire matter relates to documents which are already in custody of investigating agency. The applicant need not be subjected to custodial interrogation. The supplementary statement of complainant and her father-in-law were recorded. They could not disclose the area of flat which was allegedly sold to them. Investigation is complete and charge sheet is filed against arrested accused.

6. Learned APP submitted that the applicant is absconding. He has preferred repeated applications for anticipatory bail before Sessions Court. The applicant has cheated the complainant. The same flat was sold to another person whose complaint is also registered. The applicant has played vital role in the transaction. The receipts with regards to the payment were signed by the

applicant. Six other cases were registered against applicant. CR No.I-178/2017 is registered with Ambarnath Police Station, CR No.I-143/2018 is also registered with same Police Station. CR No.517/2020 and CR NO.516/2017 are registered with Ambarnath Police Station. CR No.527/2019, CR No.I-198/2017 were registered with Shivaji Nagar Police Station. In reply to the submissions of learned APP, the applicant has placed reliance upon compilation of documents. The applicant has placed on record additional submissions and additional documents. It is submitted that CR No.I-166/2017 is registered at the instance of Kanhiyalal Waghela for offences u/s.420,465,466,467,471 r/w 34 of Indian Penal Code. The dispute has been settled between the parties and the complainant has filed affidavit that he has received the amount. CR No.I-195/2017 registered by Dilip Parmar for offences u/s.419, 420, 465, 467, 471 r/w 34 of IPC, has been settled between parties. Both the sides have preferred petition for quashing the proceedings by consent. CR No.I-182/2017 is registered by Milind Jambhale for offences u/s.465, 467, 471 r/w 34 IPC. The complainant is in possession of all the three flats which were sold to him since 2015. CR No,.I-184/2017 was registered by Nutan Gonehalli for offences u/s.406, 420 IPC alleging that complainant has been deceived for Rs.85 lakh. The applicant and the firm has filed private complaint against Nutan Gonehalli for offences us.384, 385, 406, 420, 506, 507 r/w 120-B of IPC and the Court has directed enquiry u/s 202 of Cr.P.C. The complainant in the said case is a money lender. CR No.I-178/2017 was registered at the instance of Dilip Mane. The complainant therein is a money lender. Loan was availed of from the complainant. Proceedings under Section 138 of Negotiable Instruments Act have been filed by the said complainant against 13 persons. CR No.I-143/2018 is registered by Sadashiv Paranjape for offence u/s.464, 465, 467, 468, 469, 471, 120-B IPC. The complainant is he owner of land. He sold his land to Balaji Associates. Entire consideration was paid to him. The applicant had taken loan from credit society. The applicant had preferred application for anticipatory bail and interim protection has been granted to him. The FIRs were registered within a span of two months by flat owners as well as landlord, out of which two cases were settled. In other cases the applicant has preferred applications for anticipatory bail and interim protection has been granted to him. Civil cases are pending between parties.

7. The FIR has been registered on 16-9-2017. The complainant has alleged that on the representations of the accused the flat was purchased from the accused in the building being constructed by them and named as Balaji Krupa. Receipts with regards to cheque payment as well as cash payment were issued by the accused. The receipts bear signature of accused. The applicant has signed some of receipts. The receipts clearly mention that payment is towards flat No.G-01. Supplementary statement of the complainant and father-in-law of the complainant was recorded. The bank statement is produced by the complainant before Investigating Officer which also refers to the entries relating to crediting the amount into the account of accused. The partnership deed was executed between and applicant and his brother Amit Musale. The said document indicates that business is being conducted by them in the name of Shri Balaji Associates. Supplementary statement of the complainant was recorded on 20-9-2017. The statement of husband of complainant was recorded on 16-9-2017. The statement of Bharat Waghela was

recorded on 24-10-2017. In his statement he has stated that witness along with his brother Kanhaiyalal Waghela were interested in purchasing house. They were introduced to applicant and his brother Amit Musale. They were informed that building is being constructed on ground+3 floors. The place of construction was shown to them. The witness and his brother demanded sanctioned plan. On perusal of the sanctioned plan it was noticed that there were two flats on the ground floor. Hence Bharat and his brother Kahniyalal Waghela booked two flats on the ground floor bearing Nos.001 and 002. The consideration for each of the flat was Rs.21.27 lakh. They deposited amount of Rs.1 lakh each towards booking of the flat by cheque. Thereafter further payment was made. Bharat made payment of Rs.14.79 lakh whereas Kahniyalal paid Rs.13,21,700/-. Receipts were issued to them. They repeatedly requested the accused to execute the sale deed. The accused avoided to do so. Subsequently the witnesses came to know that construction was being carried out in stilt parking space and the flats sold to them were situated in the said area. Some amount was returned to them. Cheques were issued by the accused which were dishonoured. Statement of Kahnaiyalal Waghela was recorded on 24-10-2017. His version was similar.

8. The applicant preferred Anticipatory Bail Application No.829 of 2019 before Additional Sessions Judge, Kalyan. The said application was rejected by order dated 27-6-2019. While rejecting the said application learned Sessions Judge has observed that the informant had given Rs.13 lakh to the accused. Registration of agreement was avoided. Flat No.1 which was sold to complainant was also sold to Kahnaiyalal Waghela. Six FIRs were registered

against the applicant which are pertaining to cheating and forgery. Hence application was rejected by order dated 23-6-2019. The applicant thereafter preferred another application before Sessions Court on 13-5-2020. The said application was rejected by order dated 16-12-2020. While rejecting the said application it was observed that he applicant is having 50% share in the firm Balaji Associates and he cannot avoid his responsibility. Prima facie case is made out against him and he did not deserve anticipatory bail. It was contended by applicant that the matter has been settled and amount has been returned to the complainant's husband and receipt has been issued to that effect. However, investigation revealed that on the said receipt the applicant and the co-accused have forged the signatures of complainant's husband. Hence this is not fit case for grant of pre-arrest bail. The applicant could not be arrested. Surprisingly he preferred third application for anticipatory bail before Sessions Court on 13-1-2021. The said application was also rejected by order dated 15-2-2021. Learned Additional Sessions Judge has observed that earlier bail application was rejected by the said Court. There is no change in circumstance.

9. I have perused the say filed by the Investigating Officer opposing application for anticipatory bail before Sessions Court. Reply dated 15-6-2020 mentions that complainant has produced receipts towards booking of flat which discloses fact that accused has accepted the amount. The plan of construction was obtained from the office of Ambarnath Municipal Council. Statements of witnesses were recorded. The applicant is the main accused. Six cases were registered against him. He is likely to repeat the same offence in case anticipatory bail is granted to him. The accused had relied upon

purported acknowledgement/receipt about the acceptance of amount by the husband of complainant from the accused. Hence the statement of complainant's husband was recorded in which he has denied to have accepted the amount by executing such receipt. Thus, the said document was fabricated. The applicant is absconding. The I.O has also filed reply dated 22-1-2021. In the said reply it is stated that the accused is absconding in other cases. the accused has fabricated the document regarding receipt of amount. The contention of the applicant is that complainant has misused the receipts. There were transaction of loan. As a matter of understanding the receipts were issued by way of security. There was another transaction with Mr.Mahajan. The amount was returned to him. The complaints were filed against husband of informant and others. Civil suit is filed by M/s.Balaji Associates against complainant and others seeking cancellation of document and status-quo order has been passed in the said suit. Private complaint has been filed against the opponents in which investigation is going on The document indicate that complainant and others have applied for anticipatory bail in relation to complaint filed at the instance of accused and the said application has been allowed. The applicant is apparently avoiding arrest for a long period of time. There is sufficient evidence against applicant. Several other cases are registered against him. Custodial interrogation of the applicant is necessary. No case is made out for grant of anticipatory bail. Hence, I pass following order :

ORDER

(i) The anticipatory bail application is rejected;

(ii) At this stage, learned counsel for applicant submits that applicant is suffering from Covid-19 and hence interim protection granted by this Court may be continued for two weeks. Considering the submission, interim protection granted by this Court vide order dated 12th March 2021, is extended by a period of two weeks.

(PRAKASH D. NAIK, J.)

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