IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1222 OF 2021

Bharati Nimba Bharambe .... Applicant
Versus
The State of Maharashtra .... Respondent

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WITH
INTERIM APPLICATION NO.1467 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.1222 OF 2021

Subodh Manohar Pandit ...Intervener
IN THE MATTER BETWEEN :
Bharati Nimba Bharambe .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Prashant M. Patil, Advocate for the Applicant.
Mr. Chandrakant Talekar, Advocate i/b. Jainish Jain, for the Intervener.
Smt. J.S. Lohokare, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 18th JUNE, 2021
[Through Video Conferencing]

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R.No.30/2021 registered at Lonavala City

Police Station, District Pune on 6.3.2021 under sections 420, 447, 451, 465, 467, 468, 471, 120-B of the Indian Penal Code.

2. The FIR was lodged by one Subodh Pandit. He has described himself as one of the Directors of M/s. Sunshine Realtors Private Limited. He has stated that there were three other Directors, namely, Sharad Mehta, Shailesh Shah and Bharat Shah. Their company was in the business of real estate, development and construction. The company had purchased a land at Survey No.34, Hissa No.1A admeasuring 1 Hectare and 35.3 Ares as well as Survey No.34, Hissa No.1B admeasuring 1 Hectare and 36 Ares situate at Kunenama village, Taluka Maval, District Pune in the year 2005. The company's name was entered in the revenue record. The company has obtained permission for construction on that particular land. They have completed RCC framework and some part of the construction for ten bungalows but due to some difficulty the construction was halted. There was some dispute between the share-holders and some directors for which there was some dispute filed before the Company Law

Board. In those proceedings, the informant and other directors were restrained from dealing with the said property. In the year 2016, the informant came across a public notice issued by Advocate Vikas Desai for one Kisan Mishra. In the notice it was mentioned that Kisan Mishra was power of attorney holder of the informant. It is the specific case of the informant that he has not given any power of attorney to Kisan Mishra and it was a forged document. The FIR mentions that using that power of attorney the said property was sold by accused No.1 to one Vispy Gundeviya. However, no amount was paid to the informant or his company and, therefore, the company has given complaint at Lonavala police station against accused No.1 Kisan Mishra. The informant had given a letter to the Talathi Office at Khandala mentioning that he had not given power of attorney to anybody including accused No.1. The informant took extract of the revenue record and made enquiries. It was revealed that Kisan Mishra in turn had executed another power of attorney in favour of the present applicant on 19.1.2017 and thereafter said property was sold on 25.5.2017 to other accused, namely, Mallinath Nolla, Pravin Salve, Vitthal Patole, Pravin Walhekar and Balu Jambhulkar for Rs.9 Crores. The entire transaction was fraudulent and on this basis, the FIR was lodged.

3. Heard Shri Prashant Patil, learned Counsel for the applicant, Shri Chandrakant Talekar, learned Counsel for the Intervener and Smt. J.S. Lohokare, learned APP for the State.

4. Learned Counsel for the Applicant submitted that the applicant herself was cheated by the main accused Kisan Mishra and she had given her own complaint against Kisan Mishra. He submitted that Kisan Mishra had executed an affidavit on 13.7.2017 wherein he has accepted the genuineness of the sale deed dated 25.5.2017. He further submitted that the concerned transaction was from the year 2017 and yet the FIR was lodged only in the year 2021. The delay has remained unexplained and after four years the applicant's custodial interrogation is not necessary.

5. He submitted that the accused Kisan Mishra has

lodged his own complaint against the present applicant by filing a private complaint vide R.C.C. No.387/2017 before JMFC. He submitted that therefore there is multiplicity of proceedings for the same cause.

6. He submitted that the main accused No.1 Kisan Mishra has also filed a civil suit against the applicant vide Civil Suit No.50/2017 in respect of the same transaction though it was dismissed in default vide order dated 16.9.2019. However, according to Shri Patil these proceedings show that the main accused No.1 Kisan Mishra had cheated the present applicant.

7. Shri Talekar, learned Counsel for the first informant submitted that there was no delay in lodging the FIR. The informant had immediately approached the police authority in September, 2017 itself and he was pursuing the matter. The applicant is a builder and is trying to misuse the documents to usurp the said property.

8. Learned A.P.P. also opposed this application. She submitted that the applicant has received monetary benefit in

respect of this transaction and, therefore, she cannot seek ignorance of facts.

9. I have considered these submissions. I have also perused the sale deed dated 25.5.2017, which is subject matter of this FIR. Apart from that I have also seen the power of attorney executed by Kisan Mishra in favour of the present applicant. Said power of attorney was executed on 19.1.2017. The aforesaid property is mentioned in that power of attorney. As per the averments and recitals in that document, it was executed because Kisan Mishra was unable to attend various offices for completing the formalities, obtaining permissions, making payments etc.. After execution of this power of attorney, the sale deed in question was executed and registered and interestingly when it was executed the main accused Kisan Mishra has signed it as power of attorney holder of the informant company. It was also signed by the present applicant. In the sale deed there is mention of mode of payment. There were 37 heads of payment amounting to total Rs.9 Crores. Majority of these payments are in favour of

the first informant. However, very significantly it is a specific case of the informant that his company or he himself has not received anything out of these transactions. This itself shows that the entire transaction was fraudulent and the informant company was put to losses.

10. In this connection it is important to note that said document is also signed by the present applicant. Therefore, she cannot plead ignorance of such non payment to the informant. She cannot even claim that the entire offence was committed single handedly by other accused Kisan Mishra.

11. The other proceedings between Kisan Mishra and the present applicant are also interesting. The civil suit between Kisan Mishra and the applicant was dismissed for default. Therefore there is a possibility that there was a collusion between the applicant and said Kisan Mishra. The fact remains that the informant's company has not received anything. The purpose of executing power of attorney in favour of the applicant was not really necessary as the sale deed was signed by Kisan Mishra as well as the present

applicant herself. The applicant's role is established in all these fraudulent transactions. As submitted by Shri Talekar the informant had approached the police in the year 2017 itself.

12. Considering all these factors, custodial interrogation of the applicant is necessary. No case for anticipatory bail is made out. The application is rejected. With rejection of this application, intervention application is also rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)