IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1839 OF 2021

Ramdas Anand Kamthe .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. A.H.H.Ponda, Senior Advocate with Mr.Shailesh Kharat for the applicant.
Mr.Ajay Patil, APP for the State.
Mr.S.K. Mohan i/b Mr.Rahul S. Kadam for the intervenor.

CORAM: BHARATI DANGRE, J.
DATED : 26th AUGUST, 2021

P.C:-

1 The applicant who is charged with offence punishable under Section 420, 468, 471 r/w Section 34 of the IPC in an offence registered with Bund Garden police station, seek his release on bail. He came to be arrested in the said C.R on 6th February 2021 on the offence being investigated by the Economic Offences Wing (EOW) of the concerned police station.

Claiming innocence and with a submission that the information on the basis of which the FIR is lodged is absolutely false and incorrect, the applicant claim parity with the co-accused Amit Nagpal and Ashish Nagpal who have been released on bail.

2 Informant is one Sahil Mohan who claim to be the Director of a Company under the name and style of M/s.Vantage Buildcon Pvt.Ltd, and he allege that in the year 2007 through one Yogesh Mehra, a land developer, he gave a proposal to purchase the plot admeasuring 1000 sq,.m with a road abutting admeasuring 13834 sq.ft. with construction of 16 flats. The land on which the construction was proposed, is located in Survey No. 6/2/24, 6/2/25 and 6/2/1.

The case of the complainant is it was agreed between him and a partnership firm M/s.Nagpal Associates in which the applicant is a partner along with Mr.Amit Nagpal that the concerned land would be subjected to development. As per the transaction, involving the development of the aforesaid property, it was agreed that the ready construction would be handed over to him within a period of 16 months from 1st January 2008 and for which the consideration fixed as Rs.3,40,00,000/-, was to be paid by the complainant.

3 The allegation is that the entire monetary transaction was insisted to be made in cash. However, the informant refused to abide by the same and made payment, although in part, through cheques. The allegation is when he sought the title report of the said property, one Advocate Prakash Kamthe (Accused no.4) prepared the said report, which declared the land

to be free from all encumbrances. Relying upon this report, the informant alleged that he went ahead with the sale/purchase transaction. The case of the complainant is he paid the entire consideration to Mr.Amit Nagpal and Ashish Nagpal on oral instructions from the present applicant to accept the amount on his behalf. After the said payment was made, when the draft of the agreement to sell was received by the informant, it was noticed that instead of assured constructed area of 13834 sq.ft, the area which was available for development was only 13400 sq.ft and the approach/access road was also conspicuously absent. It is alleged that the complainant thereafter expressed his intention to cancel the agreement, however, on the intervention of the father of accused nos.1 and 2, the issue was resolved. The consideration amount was proportionately reduced from Rs.3.40 crore to Rs.1.54 crore. It is alleged that the land was not developed for considerable period of time and the money obtained towards consideration was being utilized by the accused persons in some other project. On the insistence of the informant to execute a sale deed, a sale deed was registered on 4th October 2017 and possession of incomplete construction was made over to the complainant. Inspite of repeated request and insistence to complete the project, there was no progress. On suspecting the foul played, when the informant approached the Talathi office, it was revealed that Nagpal Associates was not the owner of the said land and the search/title report was fabricated. Furthermore, it is alleged that at the instance of the applicant on a complaint to the Municipal Corporation, some portion of the construction was demolished.

The aforesaid allegations, therefore, resulted in registration of offence under Section 420, 468, 471 r/w Section 34 of the IPC, when it is alleged that the accused persons misrepresented about the partnership firm and accepted the money towards development of the land, but the work was not completed and on the contrary, the money was invested somewhere else.

4 Learned counsel for the applicant has vehemently argued in support of the application and the foremost argument is that the subject FIR is a counterblast to the FIR dated 18th December 2018 and complaint dated 28th April 2018 filed by the applicant against Mr. Nagpal and the First Informant which are prior in point of time. The submission is that the present FIR is filed by suppressing the factum of pendency of the complaint filed under Section 200 of the Cr.P.C, involving the same subject matter, when there was refusal by the Magistrate to entertain the application of the complainant under section 156(3) of Cr.P.C in form of a private complaint. It is submitted that the procedure under Section 202 of Cr.P.C has commenced and the complainant and Mr.Yogesh Mehra are already examined as witnesses. The further submission is that the complainant has

suppressed about the civil suit being instituted by the applicant and a counter claim filed by the informant against Amit Nagpal and Vantage Buildcon Pvt.Ltd i.e. the First Informant. It is also submitted that Rs.3.40 crore are admittedly not paid to the applicant or in the account of Nagpal Associates, and the same is utilized by Accused nos.1 and 2 in their own companies, and a consideration agreed was admittedly Rs.1.54 crore as mentioned in the sale deed and not Rs.3.40 crore as claimed by the First Informant. The applicant also seek parity with Amit Nagpal and Ashish Nagpal and the submission is the said accused persons who are attributed a more grave role are released on bail though the entire money was received by them.

5 I have also heard learned counsel for the intervenor/ complainant who has vehemently opposed the application by submitting that the complainant has been cheated by projecting a false title report prepared by the co-accused, who is an Advocate and happens to be the brother of the present applicant. Relying upon the said title report, which gave a clear and marketable title, it is alleged that the applicant individually along with his partner instructed Yogesh Mehra that the complete payment to be made in cash for which an acknowledgment would be tendered later. It is alleged that from 1st December 2007 onwards, payments were received by Amit Nagpal and Ashish Nagpal on behalf of Nagpal Associates and valid receipts were issued for each payment.

Ramdas Kamthe (present applicant) issued an authority letter on 24th January 2008 and the payment of 3.40 crore was completed on 1st April 2008. Reliance is placed on the authority letter of the present applicant at page 169 where he was declared that he is the owner of plot admeasuring 4600 sq.ft bearing bearing Survey No. 6/2/24 situated at Village Karade, Taluka Haveli, District Pune and he has entered into joint venture with M/s.Nagpal Associates. He further declared that the partner of M/s.Nagpal Associates, Mr.Amit Nagpal has decided to construct and sell the entire proposed construction for Rs.3,40,00,000/- along with the construction cost and MSEB meter installation charges. He expressed that he was in agreement with the proposal and authorized Mr.Amit Nagpal to sign the MOU on his behalf. Receipt of Rs.3,40,00,000/- is passed on 24th January 2008 acknowledging the amount from M/s.Vantage Buildcon Pvt.Ltd as per Schedule – A towards the area of 13834 sq.ft. This was shown as a payment against booking of “Meadows Supreme”. The submission of the counsel for the intervenor is that a stamp paper was purchased by the purchaser Company for registering the agreement, but the registration is delayed, when it was noticed that the construction of the plot was reduced and the land of the road area was excluded. The complainant demanded return of money and closure of the deal but on negotiations, with Krishnalal Nagpal, where the sellers after waiving the interest upto September 2019, i.e. the date on which they received the money, they agreed for registration at Rs.1.54 crore with a condition that the cash amount will be returned to the complainant and a cheque of Rs.1.12 crore would be accepted.

The intervenor argue that it was revealed to him on further inquiry that neither M/s.Nagpal Associates nor any of the partners were owners of the land as per land revenue record. It was subsequently dawned upon him that there no sanction is obtained from BMC to construct the building and some portion of the building was demolished. As a facade, the applicant has also registered an FIR against his partner Amit Nagpal but the complainant is not concerned with the internal dispute and what is relevant is that all the accused persons hatched a conspiracy and made the complainant part with his money by projecting a clear title which is denied by the Talathi. Therefore, deception, dishonest intention, dishonest inducement and wrongful gain and wrongful loss has been attributed to the present applicant. The intervenor, therefore, opposed the application of the applicant in wake of the material compiled in the charge-sheet which clearly make out an offence under Section 420, 468, 471 r/w Section 34 IPC against the present applicant.

6 I have perused the material compiled in the charge-sheet which reveal that the transaction as agreed between the parties was in respect of three parcels of land and the accusations are levelled against two of them, being plot admeasuring 1000

sq.ft and 3600 sq.ft being owned by one Mr.Kagdi, in respect of which the present applicant is the Power of Attorney holder vide Power of Attorney dated 16th December 2004. Another plot admeasuring 5346 sq.ft is owned by one Madhav Sathe who executed development agreement in favour of M/s.Durvankur Estates, who in turn executed Power of Attorney and development agreement in favour of Amit Nagpal – co-accused. The two parcels of land were adjacent to each other and a joint venture agreement came to be executed between the applicant and Amit Nagpal who developed the said properties and the joint venture in the name of M/s. Nagpal Associates came into existence on 24th April 2007. The construction was responsibility of Mr.Amit Nagpal and the profit was to be shared in the equal portion i.e. 50% each between them. The building permission and sanctions was responsibility of Amit Nagpal. In December 2007, the informant approached the accused and expressed desire to invest in the plots by developing them and the applicant was authorized to accept the proposal and sign the MOU. On 15th December 2007, an agreement came to be executed between M/s.Nagpal Associates through its partner Amit Nagpal and M/s.Vantage Buildcon Pvt.Ltd through its Director Mrs.Manju Mohan as the purchaser and/or investor for outright purchase of constructed and unconstructed area and approach road to the said property as per plan and comprising of 16 flats mentioned in the agreement. The total consideration for the said project and land admeasuring 924.51 sq.m was agreed as Rs.3,40,00,000/-. Pertinent to note that the vendors i.e. Nagpal Associates projected that they had acquired development rights of the properties from its owners one Mr.Kagdi and Mr.Sathe and projected that they have the sole and exclusive right to sell the flats to be constructed on the said property and to enter into agreement for purchase or with the investors to receive the sale price thereof. Accordingly, the present applicant issued the authority letter on 24th January 2008 where he described himself as owner of the plot admeasuring 4600 sq.ft bearing Survey No.6/2/21 and that he has entered into joint venture with M/s. Nagpal Associates. The co-accused acknowledge the receipt of consideration towards the amount agreed for purchase of the said plot from the complainant and receipt to that effect is compiled in the charge-sheet which acknowledge receipt of Rs.2,85,90,000/- by way of cash and the receipt passed on payment made by various cheques under the signature of Amit Nagpal are also included in the charge-sheet.

7 An affidavit sworn by Yogesh Mehra who was engaged by M/s.Vantage Buildcon Pvt.Ltd to organize their investment in the project in Pune is compiled in the charge-sheet and the said affidavit is sworn on 28th January 2011. The deponent of the said affidavit, after giving the details of the deal for the project at Kharadi at Survey No.6 mention about a plot of 1000 sq.m with an independent entry from the main road for

exclusive use of the buyer. In para-4 of the said affidavit, the deponent has stated to the following effect :-

> *"That I had contacted Mr Kishan Nagpal and Mr Amit Nagpal of Nagpal group of Builders and they offered to make a project for the Vantage Buildcon Pvt. Ltd at Kharadi and offered to sell a plot measuring 1000 sq mtr along with complete land and approach road connecting from the main road with construction of 16 Flats with all connected amenities at a cost of Rs 3,40,00,000/- (Rupees three crores and forty lacs) with the following conditions:*
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> *a. The money will be paid in advance by cash.*
> *b. The work will be completed in 16 months with effect from 01 January 2008 and handed over.*
> *c. In case of non compliance a penal interest of 18% per quarter will be paid by the sellers on the total money received by Nagpal group till the project is completed and handed over to M/S Vantage Buildcon Pvt Ltd.*

8 Further, in para 5, he state that M/s.Vantage Buildcon Pvt.Ltd paid the amount in his presence to Nagpal Group as per the agreed terms and conditions and the amount was received by Amit and Ashish Nagpal with an authority letter from Ramdas Kamthe on behalf of Nagpal Group. The details of payment amounting to Rs.3,40,00,000/- find place in the chart in paragraph no.5. The deponent also depose that Amit Nagpal and

Ashish Nagpal of M/s.Nagpal Group accepted the cash amount in his presence and signed the receipts for accepting the same to which he is a witness and he has also signed the documents in the capacity as a witness. He further depose that M/s.Vantage Buildcon Pvt.Ltd purchased stamp paper for Rs.9 lakhs and wanted to get the agreement registered at an early date. During first week of April, since no action was found to be taken by the sellers and no work had commenced, and the sellers also backed out to give the independent road entry for the purchaser as promised, thereby excluding the major portion of the land from the project and since during inspection of the documents, it surfaced that the complete land was measuring less than 1000 sq.m, which deprived the benefits provided by the Municipal Corporation to the purchasers, re-negotiation took place. The re-negotiated amount was decided as Rs.1,54,10,000/- and the documents for agreement were accordingly prepared. M/s.Nagpal Group wanted the amount to be paid in cheque to which the Director of M/s.Vantage Buildcon Pvt.Ltd insisted that the complete cash received along with the interest, be returned and then, cheque of Rs.1,12,00,000/- i.e. the balance amount will be paid as agreed. Mr.Amit Nagpal assured that the complete money will be paid with interest on the date of completion of project, but till then, they should be allowed to use the money. Mr.Amit Nagpal confirmed that they had already passed a receipt of the cash received and hence, they were committed to their promise.

The terms were accepted by both the parties and while executing the agreement to sell, it was agreed that the balance will be paid at the time of possession. This delayed the registration of agreement which was executed almost 16 months of making payment. The agreement to sale was registered on 27th April 2009 under Amnesty clause and additional stamp duty was also paid by M/s. M/s.Vantage Buildcon Pvt.Ltd. In para 13, the deponent has made the following averment :-

> *"Since the intentions of Seller parties are doubtful and I am the only witness to the cash transaction and the agreement to sale, therefore, I am making this statement of true facts in the form of an Affidavit on oath in presence of witnesses, so that our clients M/S Vantage Buildcom Pvt Ltd through its Directors Mr Sahil Mohan and Mrs Manju Mohan can use this statement and affidavit in any proceedings against Mr Amit Nagpal, Mr Kishan Nagpal, Mr Ashish Nagpal and Ramdas Kamthe.*

9 The sale deed came to be executed in the year 2016 and the parties to the said deed are M/s.Nagpal Associates through its partner Mr.Amit Nagpal and Ramdas Kamthe (applicant) and M/s.Vantage Buildcon Pvt.Ltd. Mr.Madhav Sathe through the present applicant Ramdas Kamthe and Amit Nagpal as Power of Attorney Holder are shown as selling and consenting party on the third part. Pertinent to note that in the agreement to sell, Madhav Sathe is not recorded as consenting party. The sale deed record that the purchaser has taken

possession of the land and the building constructed thereon and this deal is executed pursuance to the agreement of sale dated 29th December 2007.

Based on the said sale deed when the complainant approached for mutation of their name in the property, the Talathi addressed a letter to M/s. M/s.Vantage Buildcon Pvt.Ltd through its Director, in reference to the letter of the Company requesting for mutation of their name in the land specified in the application. The Talathi inform that along with the said application, a letter dated 4th October 2017 is also appended. It is pointed out that by virtue of the sale deed, the seller is Nagpal Associates through its partner Amit Nagpal and the consenting party Madhav Narayan Sathe and Kadar Allabaksh Kadri through their Power of Attorney holder, Amit Nagpal is shown. However, when the 7/12 extract of the land mentioned are perused, the name reflected are Madhav Sathe and the three Kagdi brothers and their name continue to be mutated as owners of the said piece of land. These persons are shown as consenting party whereas 7/12 extract record their name as land owners. Since the 7/12 extract do not bear name of Amit Nagpal, the mutation has been refused in favour of the Company which apply for mutation.

The Talathi thus fortify the allegation that neither Nagpal Associates nor any of the partners were owners of the land as per revenue records. Search report/title report prepared to induce the complainant is a fraudulent document and the joint conspiracy depicting title to Nagpal Associates which induced him to part with the money in the name of development. The applicant who was holding the piece of land and dealing with it through a POA projected that he was the owner of the land. Knowing very well that the construction made was illegal, part of the building was demolished on a complaint of the applicant. The entire approach of the applicant towards the transaction is a depiction of dishonest intention, but for the concealment and deception at the instance of the applicant, the complainant could not have parted with the money if he was aware that there was no clear and marketable title. Resultant effect of the inducement is that the complainant parted with huge amount of 3.55 crore since 2007 and the complainant suffered a loss of more than 20 crore as they could not exploit the property since 2007 and the money remained locked in the project.

Though the co-accused has been released on bail by the trial Court, I am of the considered opinion that looking into the serious nature of accusations and the material compiled in the charge-sheet, clearly depicting his role, the Application deserve a rejection and is accordingly rejected.

SMT. BHARATI DANGRE, J

Tilak