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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 387 OF 2021

ALLWYN PLACIDUS MASCARENHASAPPLICANT

V/s.

THE STATE OF MAHARASHTRARESPONDENTS
AND ANR

WITH

ANTICIPATORY BAIL APPLICATION NO. 388 OF 2021

GERALD MASCARENHASAPPLICANT

V/s.

THE STATE OF MAHARASHTRARESPONDENTS
AND ANR

Mr. Ashok Mundargi Senior advocate a/w Abinash Pradhan a/w Garima Agrawal a/w Shashank Sardesai i/b Wadia Ghandy & Co. for the Applicant in ABA 387/2021

Mr. Mihir Gheewala a/w Abinash Pradhan a/w Garima Agrawal a/w Shashank Sardesai i/b Wadia Ghandy & Co. for the Applicant in ABA No. 388/2021

Mr. Ajay Patil APP for the State

Mr. Gautam Tiwari a/w Ms. Shruti Rajput i/b Dipesh Jain for respondent no. 2 in both matters

Mr. Manoj Shedage, PI, L. T. Marg police Station

CORAM : NITIN W. SAMBRE, J.

DATE: 21st OCTOBER, 2021.

P.C.:

1] Applicants are seeking pre-arrest bail in C.R. No. 185/2020 registered with L. T. Marg Police Station for offence punishable under Sections 406, 420 r/w 34 of the Indian Penal Code.

2] Case of the prosecution is, applicants who are owner to land CTS No. 857, 867 and 828 which is agreed to be sold to complainant vide deed of conveyance dated 18/08/2010 which is registered on 24/11/2010 for consideration of Rs. 2.55 Crores. Out of the aforesaid property in relation to CTS No. 828, already there exist a sale deed dated 19/11/1991 in favour of third party.

3] In the aforesaid background, having noticed that applicants have practiced fraud, complainant has come out with aforesaid criminal complaint against all the applicants.

4] The submissions of Mr. Mundargi, learned senior counsel appearing for the applicants are, necessary ingredients of the offence

cannot be inferred in the following set of circumstances:

(A) At the behest of applicants, a civil dispute was initiated on 08/03/2019 to the extent of seeking rectification in the deed of conveyance dated 18/08/2010 in relation to land CTS No. 828 admeasuring 4376 Sq. meters;

(B) As regards the said dispute land i.e. CTS No. 828 is concerned, same was acquired and compensation is already received by the complainant pursuant to the consent extended by the applicant before the Land Acquisition Officer;

(C) Complainant has already settled the dispute with owner of CTS No. 828, to whom the title was transferred in 1991, in an Arbitration proceedings and;

(D) On earlier occasion, the very same complaint was ordered to be closed having regard to the nature of dispute being Civil.

5] Learned APP assisted by learned counsel for the complainant

would strenuously urge that all the applicants, who are highly educated, in a calculated manner, with criminal intention, practiced fraud. It is claimed that even if complainant has received compensation, the fact remains that complainant was put to monetary so also business losses. Counsel for the complainant in detail tried to invite attention of this Court to nature in which the proceedings took place wherein confidence of the complainant claimed to have been gained for settling the dispute with third party owner. As such, it is claimed that criminal intentions of the applicant, since inception can be inferred.

6] Considered rival submissions.

7] On earlier occasion, investigating agency has closed the matter having regard to the fact that same has nature of civil dispute can be inferred from the record as documentary evidence to that effect is not disputed by the learned APP on instructions.

8] Entire property which was purchased by the complainant

referred to above, including CTS No. 828 was subjected to acquisition and complainant has received monetary compensation pursuant to the consent extended by the applicants. Said approach of applicants of extending consent in favour of applicants speaks of bonafides of applicants. It is required to be noted that complainant himself has settled the dispute in an Arbitration proceedings with third party who has purchased a property in 1991 to the extent of CTS No. 828.

9] The aforesaid factual gamet since are not disputed between the parties, said civil dispute is already subjudiced before competent civil court to which complainant is a party.

10] In the aforesaid backdrop, having regard to the fact that entire offence alleged is based on documentary evidence which is already in the custody of investigating agency, complainant having already received entire amount of compensation and he has already settled the dispute in arbitration proceedings, in my opinion, it cannot be prima facie inferred that applicants have criminal intentions.

11] In the aforesaid backdrop, case for confirmation of ad-interim relief is made out.

(i) In the event of arrest of the applicants in C.R. No. 185/2020 registered with L. T. Marg Police Station for offence punishable under Sections 406, 420 r/w 34 of the Indian Penal Code, they be released on bail on furnishing P.R. bond in the sum of Rs. 50,000/- each with one or more sureties in the like amount.

(ii) Applicants shall neither influence prosecution witnesses in any manner nor tamper with evidence.

(iii) Applicants to attend Investigating Officer from 22/11/2021 to 30/11/2021 between 10.00 a.m. to 12.00 noon and thereafter as and when directed.

12] Applications stand disposed of.

[NITIN W. SAMBRE, J.]