IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 314 OF 2021

Dhaval Vijaybahi Doshi ... Applicant
Versus
The State of Maharashtra & Anr. ... Respondents

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Ms. Rekha K. Mehta, Advocate for the Applicant.
Mr. Y. M. Nakhwa, APP for the Respondent No.1 – State.
Mr. K. H. Holambe-patil, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATE : 21st APRIL, 2021

PER COURT:

1. The applicant is apprehending arrest in M.E.C.R. No. 01 of 2020 registered with Ghatkopar Police Station, Mumbai for offences under Sections 467, 471 of Indian Penal Code. (for short "IPC").

2. The case of the prosecution is that the complainant was introduced to the applicant in 2015. He went to Dubai in 2016. He returned from Dubai in September, 2016 and again went to Dubai for work. He returned after one month in November, 2016. He was working with Meena Jewellers from 4th January, 2017 to 8th December, 2019. In July, 2019 the complainant was called by the Police. He was shown declaration/understanding executed on a stamp paper. It was mentioned therein that the complainant and his

wife through broker purchased Diamond from 11th July, 2015 to 10th July, 2015 valued Rs. 71,24,404/-, the document contains photographs of complainant and his wife. The witnesses to the documents were one Hemant Brahmbhatt and Mehul Dani. The document also contained signatures of Advocate Shinde. It was alleged that signatures of the complainant and his wife were forged. The document was executed on 19th August, 2016 and notarized. The complainant was not in India on the date of execution of the document. On 19th August, 2016, the complainant was at Dubai. The complainant filed a private complaint before the Court. The learned Magistrate by order dated 4th January, 2020 directed the concerned Police Station to register the offence and investigate the case. In pursuant to that M.E.C.R. was registered on 14th February, 2020.

3. The applicant preferred application for anticipatory bail before the Court of Sessions. The application was rejected by order dated 17th October, 2020.

4. Learned advocate for the applicant submitted that the complaint is false. The FIR is registered on the basis of private complaint filed by respondent No.2. The applicant was granted interim protection by this Court vide order dated 4th November, 2020. Custodial interrogation of the applicant is not necessary. The applicant is diamond merchant carrying on his business in the name

and style of Harshha Gems at Diamond Market, Bandra since more that 20 years. He was introduced to the informant through broker Mr. Hemant Bramhabhatt. They are members to Mumbai Diamond Association. The applicant had conducted transactions of Diamond with informant in the past. There were subsequent transactions with the informant from July 2015. The payment of Rs. 71,24,404/- in respect to these transaction was not made by the informant. The applicant made complaint to Chirag Nagar Police Station, Ghatkopar, Mumbai on 23rd July, 2016. The applicant learnt that informant has not paid dues to several other persons. The members of Mumbai Diamond Association lodged complaint against informant on 14th September, 2016. The wife of the informant visited the residence of the applicant in 3rd week of August, 2016 with an undertaking dated 19th August, 2016. The undertaking mention that the payment would be made on or before December, 2016. The informant failed to comply the MOU. The applicant made complaint to Ghatkopar Police Station on 15th March, 2017. Since no investigation was conducted, the applicant filed a private complaint before the Court of learned Magistrate at Vikhroli against the informant and his wife under Sections 406, 409, 416, 471, 420 of IPC. The complaint was filed on 31st July, 2017. The copy of the complaint has been annexed to the application. Learned Magistrate did not direct investigation under

Section 156(3) of Cr.P.C. but proceeded under Section 200 of Cr.P.C. vide order dated 4th October, 2017. During this period, the Police had assured that the FIR would be lodged against the informant. The applicant made an application for withdrawal of the complaint. The said application was adjourned from time to time. The application was dismissed on 21st September, 2019 as the applicant and advocate were absent. The applicant persuaded his complaint with the Police. On 19th February, 2020 the applicant received notice dated 18th February, 2020 from Ghatkopar Police Station under Section 41(a)(i) of Cr.P.C. Apprehending arrest applicant, preferred an application for anticipatory bail before the Sessions Court which has been rejected. It is submitted that the applicant has to recover the amount from the informant. The applicant had immediately filed complaints against the informant. The applicant is victim at the hands of informant.

5. Learned APP submitted that the claim of the applicant on the basis of undertaking/declaration dated 19th August, 2016 is false. The said document was executed on 19th August, 2016. The informant who had allegedly executed the document was out of India on the date of execution. The entry in the passport of the informant shows that he was abroad on 19th August, 2016. The signatures of the complainant and his wife are fabricated.

Investigation is in progress. Custodial interrogation of the applicant is necessary.

6. The complainant is filed in reply opposing the application for anticipatory bail. It is submitted by learned counsel for the complainant that the undertaking dated 19th August, 2016 is fabricated document. The claim of the applicant is false. The complainant was abroad on 19th August, 2016 which is fortified by the passport entries. In the reply it is contended that, on 21st July, 2019 the informant and his wife were called by the Police for inquiry. They attended Police Station. They were informed about complaint filed by accused No.1. Their statement was recorded in Marathi. They are not conversant with Marathi. They do not know what is recorded in those statement. The undertaking dated 19th August, 2016 is false and fabricated document. The signatures of the complainant and his wife are forged. The complainant was out of India from 16th August, 2016 till 15th September, 2016. This evident from Immigration Departments at Airport of Mumbai as well as Airport at Dubai on his passport. There are no initials on the 1st, 2nd and 3rd pages of the said undertaking. Old photographs are pasted on the undertaking. The stamp paper bears the rubber stamp showing that is is issued from Vasai. The accused No.1 is resident of Sion. The stamp paper was purchased from Nalasopara. Both these rubber

stamps are contrary. The stamp paper bears rubber stamp of Binod Kumar, as a person who has purchased the said stamp paper. The undertaking do not bear serial number in the register of the Notary. The document was not signed by the complainant and his wife. The accused prepared the undertaking containing false statements. The undertaking create rights in favour of the accused which is in the nature of valuable security. The complainant and his wife were allegedly present before the Notary and signed document, although they were not present. The Custodial interrogation of the applicant is necessary. The forged document is in the custody of the accused.

7. The M.E.C.R. has been registered on the basis of private complaint filed by respondent No.2. The case of the complainant is that Hemant Bramhabhatt had introduced the complainant to applicant about 5 years ago. In July, 2019 the complainant received call from Ghatkopar Police Station. He visited the Police Station along with his wife. They were shown the declaration on the stamp paper. The undertaking mentioned that the complainant and his wife had purchased Diamonds worth Rs. 71,24,404/- through broker Hemant Bramhabhatt and that the said amount would be returned to the applicant along with interest. The complainant was not in Mumbai on 19th August, 2016. The document was fabricated. It is pertinent to note that the applicant had forwarded the complaint to

Senior Inspector of Police, Ghatkopar Police Station on 23rd July, 2016, through his advocate which has been received by the said Police Station on the same day. In the said complaint it was stated that the applicant is in the business of Diamond. Hemant Bramhabhatt is the broker. The Respondent No.2 purchased the diamond. Initial transactions were cleared. Subsequent transactions were for Diamonds worth Rs. 71 Lakhs. The Diamonds were delivered to him. But the payment was not made. The applicant also forwarded another complaint to the Police on 16th March, 2017 against Respondent No.2 and his wife. The complaint provided statement of accounts, details of transactions, the date of the transactions and the amount due from the respondent No.2 and his wife. The Police did not register FIR. The applicant then filed private complaint before the Court of Magistrate at Vikhroli bearing C.C. No. 105/SW/2017 against respondent No.2 and his wife for offence under Section 406, 409, 416, 417, 420 and 506(II), 120-B r/w Section 34 of IPC. The said complaint was filed on 1st August, 2017. According to the applicant, the learned Magistrate did not direct any investigation in the said complaint. The order was passed under Section 200 of Cr.P.C. Letter dated 18th February, 2020 was issued to the applicant and Hemant Bramhabhatt by Ghtakopar Police Station for inquiry in pursuant to the order passed by the learned Magistrate in the complaint of respondent No.2. M.E.C.R. was registered against the applicant, Hemant Bramhabhatt, Advocate M. V. Shinde, Advocate S. K. Thakur and others.

8. The case of the applicant is that pursuant to the complaint filed by the applicant, the undertaking/MOU was handed over by the wife of respondent No.2 to the applicant. The document was prepared by them. It is relevant to note that the complaint was filed first in point of time by the applicant. The respondent No.2 in his reply admitted that he was called for inquiry along with his wife by the Police. The Police did not take cognizance of the complaint filed by the applicant. It is pertinent to note that the undertaking bears the photographs of the respondent No.2 and his wife. There is no denial about the fact that the photographs belongs to them. The only contention which is urged is that those were old photographs. There is no explanation as to how the photographs came in custody of applicant if the document is prepared by accused. The claim of the applicant that the payment towards the sale of Diamond was in existence since 2016 which is evident from the complaint filed by him. The complainant alleged that he was not in Mumbai on 19th August, 2016, when the document was executed. Whereas the claim of the applicant is that the document come from wife of complainant. In these circumstances, the applicant need not be subjected to

custodial interrogation. Case for granting this application is made out.

ORDER

(i) Anticipatory Bail Application Nos.314 of 2021 is allowed;

(ii) In the event of arrest of the applicant in connection with M.E.C.R. No. 01 of 2020 registered with Ghatkopar Police Station, Mumbai the applicant be released on bail on executing P. R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

(iii) Applicant shall report investigating officer on 28th, 29th & 30th April, 2021 between 11.00 a.m. to 1.00 p.m. and thereafter as and when called by the Investigating Officer, till filing of charge-sheet.

(iv) Anticipatory Bail Application stand disposed of accordingly.

(PRAKASH D. NAIK, J.)