

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1487 OF 2021

Satish Vasant Agale

Applicant

versus

The State of Maharashtra

Respondent

Mr.Silvin Yohanan Kale, Advocate for applicant in ABA.

Mr.Deepak Y. Chitnis, Advocate for original complainant.

Mr.S.S.Pednekar, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 2nd July 2021

PC :

1. This is an application for anticipatory bail in CR No.296 of 2019 registered with Tilak Nagar Police Station for offence u/s.420 of Indian Penal Code.

2. The case of prosecution is that the complainant was in need of premises for using it as godown. The premises of applicant was shown to complainant. On 16th January 2019 the applicant approached the complainant and stated that he is the owner of premises admeasuring 500 sq.ft and there are three tenants occupying the premises. He is willing to let out the premises on rent of Rs.18,000/- p.m. The complainant agreed for the proposal. The applicant demanded advance rent. On 16th January 2019 cheque of Rs.11,000/- was given to the applicant. Thereafter applicant was called to office for execution of documents. On verifying the documents the complainant realized that premises does not stand in

the name of applicant it belongs to his father. The registration could not be done. The applicant stated that he will get Power of Attorney of his father. Subsequently the document was registered. The complainant transferred Rs.2.59 lakh by RTGS to the applicant. Possession of the premises was to be handed over on 1st February 2019. However, it was noticed that the tenants who were occupying the premises, had not vacated it. The complainant informed about it to the applicant. The complainant went to the premises for taking possession. The occupant of the premises informed him that the owner has not refunded their deposit and hence the premises is not vacated. On 7th February 2019 the complainant again went to the premises to take possession but it was not found vacant. Applicant requested for further time to vacate the premises. Subsequently the applicant gave evasive answers. The agreement was not cancelled. The possession of the premises was not given to complainant. Amount of Rs.2.70 lakh which was handed over to the applicant was not refunded to the complainant.

3. Learned counsel for applicant submitted that dispute is of civil nature. Custodial interrogation is not necessary. If time is granted to the applicant he would refund the amount.

4. Learned APP submitted that complainant has been deceived by the applicant. Sufficient time was granted to the applicant to refund the amount. Except promises, no action was taken by the applicant to return the amount to complainant.

5. Learned advocate for complainant submitted that matter was referred to mediation and the applicant had promised to make

payment. However, the promises were not fulfilled. No further time should be granted to the applicant.

6. It is apparent that complainant has parted the amount to the applicant towards rent of premises. The premises was not handed over to the complainant. The amount accepted by the applicant was not returned to the complainant. The applicant has preferred application for anticipatory bail before Sessions Court. The first application was dismissed for want of prosecution vide order dated 4th January 2020. The said order indicate that matter was sent for mediation and report was received stating that informant and the applicant have settled the dispute and the informant had undertaken to withdraw the FIR on receiving Rs.3.30 lakh which was payable by 26th December 2019. However, none had appeared before the Court since 24th December 2019. Thereafter the applicant preferred another application before Sessions Court seeking anticipatory bail. The applicant had contended that there is no intention of cheating and he was willing to refund the amount. This is a case of breach of contract giving rise to civil dispute. Learned Sessions Judge by order dated 28th April 2021 rejected the said application. It was observed that in the month of February-2019 the applicant had shown his inability to hand over possession of godown and assured to return the amount. However, for more than two years, the applicant is just promising to return the amount but actually did not return it. This shows his intention of cheating. Record goes to show that applicant with ill intention instead of refusing the refund of the amount has been avoiding it under the pretext that he is ready to refund the amount. Thereafter the applicant preferred third application for anticipatory bail before Sessions Court. The said application was

rejected on 9th June 2021. The applicant contended that parties had settled the dispute and it was agreed that the applicant would pay Rs.3.30 lakh to the complainant. Due to spread of pandemic, the applicant could not honour his promise. Now he is willing to pay Rs.1.30 lakh to the complainant by way of demand draft. The transaction is of civil nature and therefore he has claimed that he is ready to pay Rs.1.30 lakh by giving remaining amount within 3 to 6 months. Learned Sessions Judge has observed that prima facie the conduct of applicant indicate his ill intention instead of refusing to refund the amount he is avoiding the same under the pretext of willing to refund the amount. The conduct of applicant cannot be ignored. The applicant has made similar submissions before this Court. Considering the fact that applicant has been repeatedly making promises which are not fulfilled, no relief can be granted to the applicant. This application deserved to be rejected.

7. Hence, I pass following order :

ORDER

(i) Anticipatory Bail Application is rejected and stand disposed of as such.

(PRAKASH D. NAIK, J.)

MST