IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1055 OF 2020

1. Ajay Santosh Pandey
2. Santosh Ramsaran Pandey … Applicants

Versus

The State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO. 489 OF 2021
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1055 OF 2020

Santosh Sukhdev Bhavsar … Applicant

IN THE MATTER BETWEEN :-

1. Ajay Santosh Pandey
2. Santosh Ramsaran Pandey … Applicants

Versus

The State of Maharashtra … Respondent

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Mr. S. M. Oak i/b. Mr. sagar A. Joshi, Advocate for the Applicants in Anticipatory Bail Application.

Ms. Anamika Malhotra, APP for the Respondent – State.

Mr. Prashant M. Patil, Advocate for the Applicant in Interim Application.

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CORAM : PRAKASH D. NAIK, J.

DATE : 25th FEBRUARY, 2021

PER COURT:

1. This is an application for anticipatory bail in C.R. No. I-320 of 2020 registered with Khadakpada Police Station, Kalyan for

offences under Sections 420, 406, 468, 471 r/w Section 34 of Indian Penal Code. (for short “IPC”) The First Information Report (for short “FIR”) was lodged on 24th September, 2020.

2. The case of the complainant is that, he is in construction business in the name as Om Sai Construction and Developers. The applicant No.1 was 50% partner. Partnership Deed was executed on 27th January, 2014. Land bearing Survey No. 55/1/B admeasuring 2080 Sq. mtrs. was purchased from Ramabai Mirkute and others by registered Sale Deed. The Sale Deed was signed by the complainant and applicant No.1. Subsequently the applicant No.1 created dispute with the complainant and tried to remove him from firm. He was threatened. Due to threat complainant shifted to Nashik. In December, 2017 when he had come to Kalyan, he visited the plot. He found that construction work was going on. He made inquiry and found that Retirement Deed from the partnership firm by showing that the Retirement Deed was fabricated. The complainant had obtained handwriting expert opinion which opined that the signatures of the complainant was forged. Till 2020 the name of the complainant was shown in the office of the registrars from the partners of the said firm the building was constructed. Flats were sold and the accused had misappropriated huge amount by way of fabricated document. The applicant No.2 was inducted as partner.

The applicant No.2 is father of applicant No.1. The FIR was registered and the investigation proceeded.

3. The applicants had preferred an application for anticipatory bail before the Sessions Court which has been rejected by order dated 5th November, 2020.

4. Learned counsel for the applicant submitted that the applicants have filed false complaint. The dispute, if any, is of civil nature. There is delay in lodging the FIR. In the complaint itself the complainant has stated that he had visited the spot in 2017. Thus, he was aware about the construction going on the plot of land. But in spite of that the FIR was lodged in 2020. It is submitted that the applicant No.1 had paid substantial amount to the original owners of the property at the time of execution of Sale Deed which is evident from the bank statement. The complainant was a dormant partner. He had retired from partnership firm. Several cases are registered against him. He is not available for investigation in respect to the complaint lodged against them. It is further submitted that the subsequent document was executed by the complainant in accordance with the memorandum of understanding executed between them on 3rd December, 2014, in which it was mentioned that in the event, the cooperation of the parties is required, the

parties to the memorandum of understanding would cooperate. The custodial interrogation of the applicant is not necessary. The building is already constructed and flats are allotted to the purchasers. Learned counsel for the applicant relied upon the decision of the Supreme Court in the case of **Geeta Devi and Anr. V/s. State of Rajasthan[1].** He also relied upon decision of the Rajasthan High Court in the case of **Nareshkumar & ors. V/s. State of Rajasthan[2].** It is submitted that the matter relates to documents and the applicants need not be subjected to custodial interrogation.

5. Learned APP submitted that there is sufficient evidence to show that the applicants were involved in forgery of document. The Deed of Retirement is forged and fabricated to oust the complainant from the partnership firm. The complainant has been deprived of his share in the partnership firm. It is further submitted that if the case of the applicant is to be accepted that the complainant has retired from partnership on 25th November, 2014, the question of executing the document subsequently does not arise. The signatures of the complainant were forged. Flats were sold to 39 persons. Learned APP also relied upon the opinion of the Assistant State Examiner of Documents, C.I.D. Maharashtra State, Pune and

1-(2019) 13 SCC 520
2-2018 SCC OnLine Raj 2061

submitted that the opinion supports the case of the complainant that his signatures were forged and fabricated. Learned APP also pointed out the supplementary statement of the complainant dated 29th January, 2021 which depicts the fact that the complainant had also parted amount towards purchase of the property.

6. Learned counsel for the intervenor reiterated the submissions of learned APP and submitted that the Deed of Retirement is false and fabricated document. The complainant has been deceived by the applicants by inducting applicant No.2 as partner in the partnership firm. The complainant has been deprived of his share in the partnership business. Although the complainant had parted money towards purchase of the property. He has been outstated from the partnership firm. The intervenor has also disputed the document relied upon by the complainant which was purportedly executed on 3rd December, 2014. It is submitted that the discrepancies found in the Partnership Deed indicate that it is fabricated document.

7. On perusal of the documents it is apparent that the complainant and applicant No.1 had executed Partnership Deed which was subsequently registered. Plot of land was purchased by the partnership firm. Apparently building was constructed. According

to complainant, applicant No.1 has fabricated the Deed of Retirement dated 25th November 2014. As a result of the Retirement Deed, the complainant discontinued to be the partner of the firm. It is pertinent to note that the Sale Deed was executed on 18th December, 2014. If the complainant had retired from partnership firm on 25th November, 2014, the question which was arises for consideration is how complainant has executed the deed subsequently on 18th December, 2014. Handwriting expert opinion obtained by the complainant as well as by the police from the state examiner of documents supports the case of the prosecution. Learned Sessions Judge while rejecting the application for anticipatory bail had observed that the Deed of Retirement is of November, 2014. There was Sale Deed for the purchase of plot in December 2014 which is signed by the complainant as a partner and also paid consideration amount. The Court also observed that the Deed of Retirement has a photograph fixed of the signatory to the documents. The photograph of the informant on Sale Deed at the time of execution was different and the same appears to have been replaced. The notary stamp which ought to have been partially seen on the photograph is missing. The first page only bears two signatures and rest of the pages have three signatures. Copy of the Deed of Retirement is with police and the Deed of Retirement produced by the applicants have different signatures. Prima facie the deed is tampered and forged. Custodial interrogation of the applicant is necessary. I do not find any reason to deviate from the reasoning given by the learned Additional Sessions Judge, while rejecting the application. The applicant No.2 was inducted as partner. Flats were sold to various persons in the building which was constructed on the said plot. It is also pertinent to note that after noticing that the construction was going on, the complainant made inquiry and obtained information about the fabrication of the Deed of Retirement. Thereafter, he obtained handwriting expert opinion and subsequently FIR was lodged. The applicant No.2 is the father of applicant No.1. He is party to the fabricated Deed of Retirement.

8. Considering the material on record, no case for grant of anticipatory bail is made out. Anticipatory Bail Application No.1055 of 2020 is rejected and stands disposed of accordingly. Interim Application No. 489 of 2021 disposed of.

9. At this stage learned counsel for the applicant submitted that interim protection granted by the Sessions Court from 6th October, 2020 and that was continued subsequently by this Court. It is submitted that the applicant proposes to move the Apex Court for seeking relief, hence interim protection may be continued for

reasonable period.

10. The request was strongly opposed by the learned APP as well as learned counsel for intervenor. It is submitted that during the pendency of this application and while interim protection was in force the applicants have executed document in relation to sale of the properties to various persons. However, considering the fact that the interim protection was granted to the applicants pending application, to enable them to approach the Apex Court, the interim protection is extended by Two weeks.

11. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)