IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1971 OF 2021

Mr. Mayank Sobhaghand Varia .... Applicant

Vs.

The State of Maharashtra .... Respondent

ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.1973 OF 2021

Mr. Jayesh Sobhaghand Varia .... Applicant

Vs.

The State of Maharashtra .... Respondent

Mr. Sudeep Pasbola a/w Ayush Pasbola, Sumit Shinde, Srushti Thakker i/by Srushti J. Thakkar for Applicants in both applications.

Ms. Rutuja Ambekar, APP for Respondent No. 1 - State of Maharashtra.
Mr. Chaitanya Pendse for Respondent No. 2 in both applications.

Coram : NITIN W. SAMBRE, J.
Date : 20TH OCTOBER, 2021

P.C.:

1. Mr. Pasbola, learned counsel appearing for the applicants, on instructions, made a categorical statement that the applicants shall deposit an amount of Rs.50.00 Lakhs with the I.O. within a period of two weeks from today. Since the statement is made on instructions, same is accepted as an undertaking.

2. In the aforesaid background, claim of the applicants seeking pre-arrest bail in Crime No. 625 of 2021 registered with Malad Police Station, Mumbai for the offence punishable under Sections 420, 406, read with 34 and 506 of Indian Penal Code needs to be appreciated.

3. It is the case of the prosecution that in the year 2006, complainant entered into an agreement of purchase of developed property of around 3,000 sq. feet flat at an agreed consideration of Rs.35.00 Lakhs. Allotment to that effect came to be cancelled in 2012, which fact is not disputed by the complainant.

4. The claim of the applicants is, out of an amount of Rs.35.00 Lakhs, 17.50 Lakhs was already refunded in cash at the time of cancellation, whereas balance amount which remained to be refunded, the applicants are willing to deposit the same with the I.O. without prejudice to their rights.

5. As far as the aforesaid contentions are concerned, learned APP assisted by learned counsel for the complainant urge that an amount of consideration was accepted for a property which was to be handed over way-back in 2006 having accepted market value of the same, which is to the tune of Rs.35.00 Lakhs. It is claimed that in the year 2018 onwards, there is an acknowledgment of aforesaid debt of Rs.35.00 Lakhs and specific reliance is placed on the balance-sheet entries of 31st March, 2018.

6. As such, it is claimed that the very ingredients of criminal breach of trust and cheating could be inferred.

7. Considered submissions.

8. It is not in dispute that the cancellation letter was revoked in favour of the applicants way-back in the year 2012, however, the terms thereof and subsequent communication speaks of non refund of amount of consideration.

9. The amount which should have been due and payable in 2012 appears to be brought within limitation, pursuant to the letter of undertaking-cum-assurance dated 29th September, 2018. The fact remains that said undertaking is not part of an F.I.R.. Apart from above, financial interest of the complainant is already safeguarded, in view of undertaking given by the applicant as referred to above. The allegation in F.I.R. purely rest on contractual obligation.

10. In the aforesaid background, in my opinion, a case for confirmation of ad-interim protection is made out. Hence, following order :

<u>O R D E R</u>

i) In the event of arrest in Crime No. 625 of 2021 registered with Malad Police Station, Mumbai for the offence punishable under Sections 420, 406, read with 34 and 506 of Indian Penal Code, the applicants be released on bail on their executing P.R. bonds in the sum of Rs.50,000/- each with one or more sureties in the like amount;

ii) The applicants are directed to attend the concerned Police Station on 26th, 28th, and 30th October, 2021 between 10.00 am. to 12.00 pm. and thereafter as and when directed;

iii) The applicants shall not influence the prosecution witnesses or tamper with the evidence.

11. Applications stand disposed of in above terms.

(NITIN W. SAMBRE, J.)