

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1167 OF 2020

Harminder Kaur Vijan and Another ...Applicants

Versus

The State of Maharashtra & Anr. ...Respondents

**WITH
INTERIM APPLICATION NO. 118 OF 2021**

Manoj Jivatram Lalwani ... Intervener

IN THE MATTER BETWEEN

Harminder Kaur Vijan and Another ...Applicants

Versus

The State of Maharashtra & Anr. ...Respondents

.....

Ms. Alisha Pinto i/b. White & Brief Adv & Soc., Advocate for the Applicants in ABA.

Mr. Karl Rustomkhan i/b. Mr. Bhavesh Thakur, Advocate for the Intervener.

Mr. A. R. Kapadnis, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATE : 18th FEBRUARY, 2021.

PC :

1. The applicant is seeking anticipatory bail in connection with C.R. No. 11 of 2020, registered with Govandi Police Station, Mumbai for the offences punishable under Sections 406, 420 r/w 34 of Indian Penal Code, 1860 ("IPC" for short).

**RajeP.
Aher**

Digitally signed
by RajeP. Aher
Date: 2021.03.02
11:26:20 +0530

2. The case of the prosecution is that the complainant is in the business of dealership of four wheeler, which is conducted in the name of Ritu Automobile Pvt. Ltd. The complainant and his wife are Directors of the said company. The complainant wanted to start workshop for repair of vehicles, the complainant was given information about the applicants by one Sushil Sahni. The complainant was also informed that the applicants are owners of said property. The complainant had discussion with applicant No.2. He represented that his mother (Applicant No.1) owner of property, situated near Shatabdi Hospital, admeasuring 12,000 Sq.ft., at the instance of complainant property was inspected. The complainant also inspected the property. He had discussion with the applicant about the rent of property. Sushil Sahni was also present. Applicant No.2 showed photocopy of the document about the ownership of the property. It was decided to let out the said property to the complainant for a period of five years on rental basis with deposit of Rs.25 Lakhs and rent of Rs. 3.5 Lakhs per month. Resolution was passed by complainant's company for executing Leave and License Agreement between 25th August, 2016 to 15th September, 2016 Rs.26 Lakhs were given to the applicants by cheque and cash. Documents were prepared. The premises was rented out for a period from 16th September, 2016 to 15th September, 2021. Agreement was

registered with Sub-registrar before execution of the agreement, renovation work was carried out by the complainant. Amount Rs.12 Lakhs were spent by the complainant for renovation. The complainant received notice from Jasbirsingh Vijan in September, 2016 stating that petition relating to aforesaid property is pending in the High Court and stay has been granted by Court, regarding use of property. On receipt of the notice, the complainant questioned the applicant No.2. He gave evasive reply. He submitted that on account of family dispute, stay order has been passed by the Court. It was decided to cancel the agreement. Documents were prepared and registered, the applicant No.1 had remained present before the Sub-Registrar. The applicants requested for time to return the deposited amount. However, the amount was not returned. The applicant No.2 avoided calls of the complainant. First Information Report was lodged on 14th January, 2020.

3. This application was initially heard by this Court on 1st January, 2021. The applicant's were permitted to add complainant as respondent. The applicants tendered affidavit and submitted that they are willing to deposit of Rs.25 Lakhs by 8th January, 2021. The affidavit dated 30th December, 2020 was taken on record. By the Order dated 1st January, 2021 this Court had observed that considering the facts and circumstances and since nothing is to be

recovered from the applicants, interim protection can be granted to them. This Court granted interim protection to the applicants with direction to deposit Rs.25 Lakhs by 8th January, 2021 with Registry of this Court. In compliance with the said order, the applicants have deposited amount of Rs.25 Lakhs in this Court on 6th January, 2021. On 15th January, 2021, the application was adjourned to 5th February, 2021 as the parties were exploring the possibility of settlement. However, there was no settlement. Hence, the application was heard on merits.

4. Learned counsel for the applicant submitted that the applicants need not be subjected to custodial interrogation. The applicants have deposited amount of Rs.25 Lakhs in this Court. The FIR was lodged with malafide intention by suppressing vital facts. The offences under Section 406 and 420 of IPC, are not made out. The matter relates to documents. The applicants has disclosed about family disputes between brother of husband of applicant No.1 and suit is pending in the High Court. Wherein, an injunction order has been passed. The complainant informed that he has no objection. However, in case of disclosure of the said fact to Honda on whose behalf the workshop was to be opened, they would object for entering into Leave and License Agreement and hence, company requested the applicants not to disclose the said fact to Honda.

Hence, it was not mentioned in agreement. Possession of the premises was handed over to the complainant. After it was agreed to cancel the agreement, when the possession was returned to applicants and it was found that premises were not in good condition. Towards renovation applicants spent 22 Lakhs. The proceedings in High Court were initiated by Jasbir Singh who is their relative. Dispute is pending between brothers of husband of applicant No.1 and Jasbir Singh who is their brother.

5. Learned APP submitted that the complainant was induced to execute Leave and License Agreement by suppressing vital fact. The complainant was made to deposit an amount of Rs.25 Lakhs. The complainant also spent a huge amount in renovation of premises. The applicants were aware that proceedings are pending in Court in respect to the said premises in view of order passed in said proceeding, they could not have let out the premises to the complainant. There was intention to cheat right from beginning. They refused to handover the amount after cancellation of agreement. There are other cases registered against the applicants.

6. Learned counsel for the Intervener, also opposed granting relief. It is submitted that clear case of cheating is made out against the applicants. By suppressing vital fact, complainant was

introduced to part with amount. The complainant has not only parted Rs. 25 Lakhs towards deposit but also spent about Rs. 12 Lakhs in the renovation of premises. The applicants were aware that there is status quo order passed by the High Court on the same property. The applicants showed forged documents claiming ownership over the property, making complainant to believe that the property belongs to them. The offences of forgery is made out. The applicant No.2 is also involved in C.R. No. 19 of 2019 registered with Govandi Police Station on 7th September, 2019 for offences punishable under Sections 406, 419, 420, 465, 467, 468, 471 r/w. 120(B). Learned Sessions Judge has taken into consideration the evidence against the applicants and by assigning reasons, the application is rejected.

7. On perusal of the FIR, it is apparent that the case of the complainant is that Leave and License Agreement was executed between the applicants under the belief that applicant No.1 is the owner of the premises. The fact that the proceeding in respect to premises, are pending in the High Court with status quo order were not brought to the notice of complainant. The said fact is disputed by the applicant. The applicant No. 1 is lady aged about 73 years. This Court while granting interim relief had observed that considering the facts and circumstances and since nothing is to be recovered from

the applicants, interim protection was granted. This Court while granting interim protection considered the submission of applicants that they would deposit Rs.25 Lakhs in this Court. The amount of Rs.25 Lakhs has been deposited by the applicants. The attempts to resolve dispute had failed. There is dispute about who has the amount spent on renovation. Considering the facts of the case, custodial interrogation of the applicants is not necessary.

8. Hence, I pass the following order.

:: ORDER ::

- (i) Anticipatory Bail Application No.1167 of 2020, is allowed;
- (ii) In the event of arrest of applicants in connection with C.R.No.11 of 2020, registered with Govandi Police Station, Mumbai, they 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) The amount of Rs.25,00,000/-, deposited in this Court be transferred to the trial Court in the event the charge-sheet is filed against the applicants and trial Court shall deal with the liability in respect of the said amount during the trial;

- (iv) Applicants shall report the investigating officer, as
and when called for;
- (v) Anticipatory Bail Application No.1167 of 2020,
stands disposed of.;
- (vi) Interim Application No.118 of 2021, is disposed of
accordingly.

(PRAKASH D. NAIK, J.)