IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1311 OF 2019

Chetan Bhagwan Thakur & Ors. …..Applicants

Vs.

The State Of Maharashtra …..Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 1615 OF 2019

Girish R. Gada …..Applicant

Vs.

The State Of Maharashtra …..Respondent

Mr. Ghanshyam Upadhyay i/by Law Juris for the Applicants in ABA No. 1311 of 2019.
Mr. Sujit Shelar for the Applicant in ABA No.1615 of 2019.
Mr. Y.M. Nakhwa APP, for the Respondent-State.
Mr. Hrishikesh Mundargi for the Respondent No.2-Informant.
Mr. Vijay Kandalgaonkar, PI, Kandivli Police Station.

CORAM : A. S. GADKARI, J.
DATE : 9th DECEMBER, 2021.

P.C.:-

Heard Mr. Upadhyay, learned counsel for the Applicants in ABA No.1311 of 2019, Mr. Shelar, learned Advocate for the Applicant in ABA No.1615 of 2019, Mr. Nakhwa for the Respondent-State and Mr. Mundargi for the Respondent No.2-informant. Perused record of investigation.

2 By an Order dated 10th July, 2019, the Applicants in ABA No. 1311 of 2019 were granted interim relief and were directed to report to the Investigating Officer on stipulated dates for the purpose of investigation.

By an Order dated 23rd July, 2019, the Applicant in ABA No.1615 of 2019 was granted interim relief and was also directed to attend the Investigating Officer on stipulated dates.

Record indicates that, all the Applicants have reported/attended the Investigating Officer and joined the process of investigation.

3 The Respondent No.2 is the first informant in both these cases.

It is the prosecution case in brief that, the Respondent No.2/first informant was intending to purchase a flat in Mumbai. The informant was having acquaintance with an estate agent by name Mr. Kishor Jaysingh. He introduced informant with Mr. Raju Advani at Indian Overseas Bank, Fort Branch. The said Raju Advani introduced himself as a builder and was carrying out constructions at Kandivali (West), Mumbai. The said Raju Advani also informed the informant that, he was constructing buildings by name Bhagwan Apartment, Sumitra Sadan and B.K. Thakur House and certain flats were vacant therein. A Bank employee by name Mr. Suresh Khupchandani informed the informant that, the Indian Overseas Bank has sanctioned loan to the project of Mr. Raju Advani. Some documents were shown by Mr. Raju Advani to the informant and in particular, power of attorney dated 5th October, 2002 executed by the Applicants in ABA No.1311 of 2019 (the landlords) in favour of Mr. Raju Advani. It is the specific case of the informant that, on the basis of the said power of attorney dated 5th October, 2002, he decided to purchase four flats in B.K. Thakur House for the consideration of Rs.12.50 lakhs per flat totalling to Rs.50 lakhs. Informant accordingly paid Rs.10 lakhs from his own funds and obtained loan of Rs.40 lakhs from the Indian Overseas Bank.

The informant subsequently met Mr. Raju Advani and requested him to deliver possession of the said four flats. However, on some or the other pretext, Mr. Raju Advani dodged the said request and did not give possession of the said four flats. As the informant did not pay installments towards the repayment of loan to the said Indian Overseas Bank, the said Bank instituted proceedings against him under the SARFAESI Act, in the Court of Metropolitan Magistrate, Esplanade Court, Mumbai. The concerned Court passed Order in favour of the Bank. The Deputy Registrar of Debts Recovery Tribunal, with the help of local police, took possession of the said four flats on 22nd March, 2006. It is alleged that, when the said Deputy Registrar took possession of the said four flats, Applicant Mr. Chetan Thakur was personally present there. However, he refused to sign on possession receipt. Informant subsequently repaid entire loan amount and obtained *"No Dues Certificate"* from the concerned Bank. He also approached the Bank for getting physical possession of the said four flats. The said Bank informed informant that, by its letter dated 23rd August, 2013 the Bank has informed Kandivali Police Station that there is an encroachment on the said four flats and some third person is in possession of it.

That, in the year 2016, the informant was in need of money and therefore by submitting original documents of the said four flats, he obtained loan of Rs.3 crores from Venus India Asset Finance Private Limited, Delhi a non-banking finance company. It has been categorically averred in the First Information Report that, the representatives of the said finance company visited the building wherein the said four flats were situated and then only they sanctioned loan in favour of informant. It is further stated that, again in the month of December-2016 when the representatives of the said finance company visited the said building they found that, the said building has been demolished. Informant repaid the loan taken by him from the said finance company in the year August 2017 and took custody of the original documents of the said four flats.

Informant subsequently noticed that, a new building was being constructed at the said site. The said new building was being constructed by the firm of the Applicant in ABA No.1615 of 2019. Informant thereafter contacted the firm of Applicant Mr. Girish Gada whereupon it was informed to him that, the Applicant in ABA No.1615 of 2019 Mr. Girish Gada has no concern with Mr. Raju Advani and the said four flats allegedly sold to the informant.

The informant thereafter filed a Writ Petition No.43 of 2018 on 6th September. 2017 in this Court for various reliefs, including relief for cancellation of permission granted by the Corporation for development of the said building by Applicant in ABA No.1615 of 2019 Girish Gada. He also filed a Civil Suit No.1014 of 2018 against Mr. Raju Advani and the Applicants in ABA No.1311 of 2019.

It is the precious case of the prosecution that, though the said Raju Advani by executing agreement dated 8th November, 2002 and 11th November, 2002 had sold the said four flats to the informant on the basis of the power of attorney dated 5th October, 2002, the Applicants by committing an act of cheating, demolished earlier building and constructed a new building thereof and the informant has been deprived of with his legitimate right to acquire and possess the said four flats.

4 Mr. Mundargi, learned Advocate for the Respondent No.2/first informant submitted that, as a matter of fact, as of today the informant is left with nothing, though he paid Rs.50 lakhs to Mr. Raju Advani for purchase of the said four flats. He submitted that, without taking into consideration the factum of execution of earlier Agreements with him by the power of attorney holder of the Applicants in ABA No.1311 of 2019, all the Applicants in connivance with each other, demolished the earlier building and constructed a new building and therefore the Applicants with

common intention have committed an offence as contemplated under Section 420 of the Indian Penal Code. He therefore prayed that, both the Applications may be dismissed.

5 Perusal of record indicates that, the Applicants in ABA No. 1311 of 2019 were landlords of the Suit plot situated at Kandivali (West), Mumbai. They had given development rights of the said property initially to Mr. Raju Advani (co-accused). The said Mr. Raju Advani, thereafter obtained power of attorney dated 5th October, 2002 from the Applicants in ABA No.1311 of 2019 for selling the immovable property. On the basis of said power of attorney Mr. Raju Advani sold the said four flats in B.K. Thakur house to the informant for valuable consideration, however did not give possession of the said four flats to him.

A bare reading of the First Information Report would indicate that, the informant subsequently got possession of the said four flats and by mortgaging them, he obtained loan initially from Indian Overseas Bank and subsequently from Venus India Asset Finance Private Limited, Delhi. It thus, *prima facie* appears that, the informant was in fact handed over the possession of the said four flats. The said fact can be discerned from the statement of informant in FIR that, the representatives of Venus India Asset Finance Private Limited, Delhi inspected it and then sanctioned loan in favour of informant.

As far as demolition of the old building and construction of new building is concerned, it is the specific contention of the Applicants in ABA No.1311 of 2019 that, as the said Raju Advani did not perform his part of obligation of the earlier agreements, they terminated his power of attorney and subsequently entered into agreement with the firm of Mr. Girish Gada i.e. Applicant in ABA No.1615 of 2019.

It further appears that, the informant was not diligent enough in protecting his own property. Even otherwise, it is the contention of the Applicants in ABA No.1311 of 2019 that, they never gave power of attorney to Mr. Raju Advani for sale of the said four flats and they have also been cheated by him. It appears from record that, Mr. Raju Advani (co-accused) is absconding till date and is not traceable.

6 Perusal of entire record would *prima facie* indicate that, the Applicants in ABA No.1311 of 2019 being landlords, have no role to play in the present crime of cheating and/or commission of criminal breach of trust of informant. It further *Prima facie* appears from record that, equally the Applicant Mr. Girish Gada in ABA No.1615 of 2019, has also no role to play in the present crime and it is Mr. Raju Advani who is the main perpetrator of the present crime as alleged by the informant.

7 Record of investigation indicates that, the police have already seized most of the relevant documents involved in the present crime. In the premise, the Applicants can be protected by pre-arrest bail.

Interim relief granted by Orders dated 10th July, 2019 in ABA

No.1311 of 2019 and dated 23rd July, 2019 in ABA No.1615 of 2019 are confirmed. However, the condition to attend the Investigating Officer is waived.

Both the Applications are allowed in the aforesaid terms.

(A.S. GADKARI, J.)

SANJIV SHARNAPPA MASHALKAR

Digitally signed by SANJIV SHARNAPPA MASHALKAR
Date: 2021.12.20 15:29:46 +0530