BDP-SPS-TAC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2530 OF 2021

Amritpalsingh S/o Javindersingh Sur …. Applicant.
V/s
The State of Maharashtra …. Respondent.

Mr. R.V. Sipahimalani for the Applicant.
Ms. Swarali Joglekar for Invtervener.
Mrs. J.S. Lohokare, APP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE : OCTOBER 25, 2021

P.C.

1] Applicant is seeking pre-arrest bail in Crime No. 419 registered 2019 registered with Juhu Police Station, Mumbai for the offence punishable under Sections 417, 420, 448, 465, 467, 468, 471, 341 read with Section 34 of the Indian Penal Code.

2] When the learned APP sought time in the matter, Counsel for the Applicant insisted for grant of ad-interim protection. This Court as such, requested Counsel for the Applicant to make out prima facie case on merit from the available record.

3] In the aforesaid background, this Court considered prayer of the Applicant for grant of ad-interim protection.

4] The case of the prosecution is, Mrs. Priti Rajendra Chand on 27/11/2019 lodged a complaint, alleging offence under Sections 417, 420, 448, 465, 467, 468, 471, 341 read with Section 34 of the Indian Penal Code. One Housing Society viz Presidency Co-operative Housing Society Ltd leased a plot bearing No.3 U-8, CTS No.770-A K/Waste Division admeasuring 1352.62 sq. meters to a Partnership Firm viz Presidency Centre for a period of 98 years with possession on 01/10/1973. Parekh-Goradia Investment Trust became part of the aforesaid Presidency Centre Partnership Firm and said Presidency Centre Partnership Firm constructed/developed the aforesaid property.

5] The aforesaid Presidency Centre Partnership Firm came to be dissolved and entire right in the aforesaid property stood vested in Parekh-Goradia Investment Trust (hereinafter referred to for the sake of brevity as "Trust").

6] Aviation Travels Pvt. Ltd. of which Mr. Nagraj was a Director received consent letter as against payment of Rs 10 lakhs for allocation of part of the aforesaid developed property and also open space from the aforesaid Trust on 6/10/1978. On 6/8/1982, said Trust issued provisional allotment letter in favour of Aviation Travels Pvt. Ltd. with a condition that property shall be used for running a veg restaurant and shall not sublease or in open space carry illegal construction. Since the said Aviation Travels Pvt. Ltd. violated terms of allotment letter, one of the beneficiaries of the aforesaid Trust viz Bhavesha Goradia initiated suit being Suit No.2865 of 1994, alleging that the Aviation Travels Pvt. Ltd. executed Leave & License Agreement in favour of one Woodland Garden Cafe, a Partnership Firm which occupied part of the aforesaid plot. Aforesaid suit came to be decreed with directions to pay compensation of Rs 1,20,03,283/- out of which 77,20500/- were to carry 6% interest. I am orally informed that said decree has attained finality. The decree further provides order of injunction against Directors of Aviation Travels Pvt. Ltd. from carrying out any repair/ construction without prior permission of the Trustees/ Trust, remove illegal construction and not to part possession to third party.

7] Since it is noticed that aforesaid decree was violated by Directors of Aviation Travels Pvt. Ltd., this Court in order passed on Notice of Motion at the behest of original Plaintiff/decree holder directed sealing of the aforesaid property which was given to Aviation Travels Pvt. Ltd. and further injuncted Aviation Travels Pvt. Ltd. from gifting the said property or creating third party interest in the said property.

8] Contrary to aforesaid order, Director of Aviation Travels Pvt. Ltd. executed Sale Deed dated 8/12/2017 in favour of Woodland Garden Cafe Partnership Firm, who, in turn, executed business agreement dated 8/2/2017 in favour of one Bunkast Hospitality Pvt. Ltd. Against the aforesaid business agreement, it is alleged that loan of Rs 14 crores was raised and the seal of the property that was ordered by the order of the High Court was broke open. It is further claimed that the property was further leased by Woodland Garden Cafe Partnership Firm to Bolyfood Hospitality Pvt. Ltd. It is claimed that in spite of aforesaid injunction order, said Aviation Travels Pvt. Ltd. through its Directors created third party interest, contrary to the letter of allotment and also without any title to the property, thereby preparing forged sale deed based on forged unregistered gift deed and power of attorney.

9] Applicant is impleaded as an accused being one of the partners of the said Woodland Garden Cafe Partnership Firm

10] Submissions of learned Counsel for the Applicant are, Applicant is not concerned with the transaction in question, as he became partner of the Firm at a later stage and not at the time when the fraud was committed. So as to substantiate his contentions, he would invite my attention to factual matrix viz Applicant joining the firm M/s Khana Ashiaana Food and Beverages Pvt. Ltd. as Director on 31/10/2018. According to learned Counsel, Applicant has invested an amount of Rs 38,50,000/- in the said company. However, fraud is practiced on him, as initially no share was allocated. It is further claimed that main Director Mr. Pravin Kamthe - co-accused inducted one Hari. However, said attempt was resisted by the Applicant through a complaint to the Registrar of Companies. It is claimed that co-accused Pravin, Director of the Company has practiced a fraud. It is further claimed that FIR is based on judgment dated 7/10/2003 and orders passed thereafter from time to time. It is claimed that

Applicant was not aware of any history about court proceedings. He would invite attention of this Court to the judgment delivered by the Apex Court in the matter of Aviation Travels Pvt. Ltd. vs. Bhavesha Suyresh Goradia and others delivered in SLP (C) 5374-5375 of 2019 i.e. Civil Appeal No.1890-1891 of 2020 decided on 2/3/2020. As such, sum and substance of the submissions is, order passed against the Aviation Travels Pvt. Ltd. was set aside by the Apex Court. It is further claimed that there is longstanding dispute in regard to the property in question and that being so, Applicant deserves protection in the matter.

11] Learned APP sought time. However, countering aforesaid submissions on merits, submissions are, there is sufficient material on record to infer involvement of the Applicant in crime.

12] I have considered the submissions.

13] The judgment of the Apex Court in the above appeal and the order passed by this Court in civil suit is a matter of record. It was the case of Aviation Travels Pvt. Ltd. before the Apex Court that judgment in the suit was ex parte. The Apex Court then considered that claim in the suit was for damages. It is further observed by the Apex Court that the Appellant Aviation Travels Pvt. Ltd. have deposited an amount of Rs 60 lakhs so as to demonstrate their bonafides. Further time of two months was granted to deposit an amount of Rs 35 lakhs. The said amount was permitted to be withdrawn by the Plaintiff and as such impugned judgment was set aside.

14] As far as the issue which is sought to be raised is concerned, it appears that present Applicant is Director of business Khana Asiaana Food and Beverages Pvt. Ltd. The said status of the Applicant is not under dispute. It is further claimed by the Applicant that it is his own partner who has practiced fraud on him in the matter of operation of business and also Bank Accounts.

15] The prosecution has assessed total amount of fraud to the tune of approximately Rs 7 crores as the property which is shown to have been purchased by the Firm of the Applicant is without any title being so vested in the owner. By mortgaging, illegally loan was obtained by Firm of Applicant. The loan appears to be obtained on the premises which was illegally constructed and the Corporation has proceeded against the same. To avoid liability, the Firm of the Applicant of which he is a Director, is shown to have acquired interest in the said property without any payment of consideration, which smacks malafides on the part of the Applicant also. Financial fraud, in my opinion, needs detail investigation and in such an eventuality, it is necessary to find out as to mode and manner in which the Firm of the Applicant got illegally benefit contrary to the court's order and also by forging documents. Prosecution is justified in claiming that custodial interrogation of the Applicant is necessary for recovery of original registered documents and also for recovery of the amount in the matter. That being so, no case for pre-arrest bail is made out. Application fails and same stands rejected.

(NITIN W. SAMBRE, J.)