

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2653 OF 2021

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|----|-----------------------------|---------------|
| 1) | HIRABHAI HAJABHAI CHAUHAN |) |
| | |) |
| 2) | RAJESHBHAI HIRABHAI CHAUHAN |) |
| | |) |
| 3) | GOVINDBHAI SAMATBHAI VADHER |)...APPLICANT |

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Pratik Kalantri, Advocate for the Applicants.

Mrs.P. P. Shinde, APP for the Respondent – State.

Dr.Abhinav Chandrachud i/b. Mr.Premkumar Pandey a/w.

Ms.Khusbhoo Pathak, Advocate for the Intervenor.

Mr.Sanjay Gangurde, Police Sub-Inspector, Economic Offences Wing, Nashik Road, present in Court.

CORAM : V. G. BISHT, J.

RESERVED ON : 9th DECEMBER 2021

PRONOUNCED ON : 14th DECEMBER 2021

AVK

1/8

P.C. :

1 The present application has been moved by the applicants under Section 438 of the Code of Criminal Procedure apprehending arrest under Sections 420, 406, 467, 468, 471 read with 34 of the Indian Penal Code (IPC) registered vide Crime No.27 of 2021 with Police Station Surgana.

2 Informant and applicant no.1 were partners. According to prosecution, somewhere in the year 2012-2013, applicant nos.1 and 2 prepared a project in respect of Hira Farm and Resorts in Gat No.10 to 13 of Mauje Hatgad and informed the informant that although they would sell the farm house for a consideration of Rs.1 crore to others, but they would offer him for Rs.75 lacs. Accordingly, the informant booked three farm houses and made payment of Rs.1,51,00,000/- by cheques. The prosecution alleges that the applicants and co-accused had shown informant a false 7/12 extract in respect of Gat Nos.10 to

13 and claimed that the said gat number belonged to them. Without obtaining the permission of the government, the project was stalled. When the informant demanded monies, the applicants and others refused and threatened him.

3 The informant, accordingly, filed a complaint under Section 156(3) of the Cr.P.C. before the Judicial Magistrate First Class, Dindori, on which the learned Judicial Magistrate First Class was pleased to direct the concerned police station to investigate the matter under Section 156(3) of the Cr.P.C. and accordingly the First Information Report (FIR) came to be registered against the applicants.

4 Mr.Pratik Kalantri, learned counsel for applicants, submits that the applicant no.1 and informant and his family members were having business relations and they were having partnership firm. Because of some partnership dispute, the informant took disadvantage of the same and misused the documents like cheques, ITRs etc. Even a complaint was also

filed by the applicant no.1 against the informant and his family members.

5 As far as the showing of bogus 7/12 extract is concerned, the learned counsel invited my attention to 7/12 extract filed at the time of arguments pertaining to Gat No.10 and showed that the same belongs to applicant no.1. Moreover, since the complaint is filed with a malafide intention and the fact that the applicants are ready to co-operate with the investigation, the applicants deserve to be protected by way of an order under Section 438 of the Cr.P.C. The learned counsel placed reliance in **D. P. Gulati, Manager Accounts, Jetking Infotrain Limited vs. State of Uttar Pradesh and Another and G. Sagar Suri an Another vs. State of Uttar Pradesh and Others.**

6 Smt.P. P. Shinde, learned APP, on the other hand opposed the submissions by contending that the applicants had induced the informant to part with Rs.1,50,00,000 crores by showing the brochure and 7/12 extract of the proposed farm

house. According to the learned APP, the 7/12 extract so shown to the informant was a forged document and this is apparent from the report of Tahsildar, Surgana. The learned APP also invited my attention to the letter dated 29th September 2021 written by the Tahsildar, Surgana, to Police Sub-Inspector, Economic Offences Wing (EOW), Nashik (Rural) and also Gao Namuna 8A and 7/12 extract and submitted that since huge amount is involved and having regard to the forgery, prayed that custodial interrogation of the applicants is necessary.

7 Dr.Abhinav Chandrachud, learned counsel for the intervenor, supports the submission of learned APP and invited my attention to the observations made by the learned Additional Sessions Judge, Nashik, while rejecting the anticipatory bail application of applicant no.1 and further the affidavits filed by other individuals, namely, Rahul Vinodchandra Mehta and Sandip Vinodkumar Mehta in order to show that they were similarly cheated by the applicants. There being no merit in the application, the same is liable to be rejected.

8 As far as the submissions of the learned counsel for the applicants that because of some partnership dispute the informant took disadvantage of various documents like cheques, ITRs and used them to implicate the applicants, the same can be raised by way of defence and can be appreciated by the learned trial Court.

9 The gist of the accusation is that by showing false and bogus 7/12 extract pertaining to Gat No.10 to 13, the applicants induced the informant to part with Rs.1,51,00,000/- towards the part payment of farm houses which were to be built by applicants on the said lands. I may note here that during the course of arguments, learned counsel for the applicant filed 7/12 extract pertaining to Gat No.10 and it shows the name of applicant no.1 as Bhogwatdar and then immediately showed 7/12 extract pertaining to the same Gat number which was downloaded on 22nd April 2021 showing the name of one Bharat Karandas Thakkar as Bhogwatdar of Gat No.10 of Village Hatgad. There is no dispute that applicants had claimed ownership of Gat No.10 of Village Hatgad.

10 I may point out the letter written by Tahsildar,

Surgana on 29th September 2021 to Police Sub-Inspector, EOW, Nashik (Rural) informing that on the basis of report of Talathi, Hatgad, dated 29th September 2021, he found that the 7/12 extract pertaining to Gat No.10 of Mauje Hatgad was a forged document. Along with said letter, Gao Namuna 8A and 7/12 extract pertaining to Gat No.10 were also annexed. These documents show that the said Gat No.10 belongs to one Bharat Karandas Thakkar and not the applicant no.1. Thus, prima facie, there appears to be substance in the submission of learned APP that on the date of representation, so made by the applicants to informant, the 7/12 extract in respect of Gat No.10 of Village Hatgad stood in the name of Bharat Karandas Thakkar. Thus, there appears to be substance in the accusation.

11 There are affidavits of two witnesses as well, namely, Rahul Vinodchandra Mehta and Sandip Vinodkumar Mehta. Affidavit of Rahul Vinodchandra Mehta shows that on showing of various documents including 7/12 extract by applicants, he invested an amount of Rs.4 lacs towards booking of a row house.

According to him, the applicants thereafter failed to take any permission from the government and rather showed him the bogus 7/12 extract and thus he was also cheated.

12 Similar is the statement of Sandip Vinodkumar Mehta who had invested Rs.5 lacs towards booking of a row house and he was also cheated in a similar manner.

13 I have carefully gone through the judgments cited by the learned counsel for the applicants. Those are mainly in respect of quashing of proceedings under Section 482 of the Cr.P.C. and therefore are distinguishable on facts. I do not find those judgments to be applicable to the case in hand.

14 Having regard to the material on record, I do not find any merit in the application. Hence, the following order :

ORDER

Application is rejected.

(V. G. BISHT, J.)