IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2040 OF 2019

Arshad Abdul Wahid Qureshi … Applicant
V/s.
The State of Maharashtra … Respondent

Mr.Amol A. Patankar for Applicant.
Mr. Y. M. Nakhawa, A.P.P. for Respondent-State.
Mr. S. G. Kathe, API, APMC Police Station, Navi Mumbai.

CORAM : A.S. GADKARI, J.
DATE : 4th September 2021.

P.C. :

1. This is an Application under Section 438 of the Code of Criminal Procedure, 1973 for pre-arrest bail in connection with C.R. No.I-163 of 2018, registered with APMC Police Station, Navi Mumbai, under Sections 420, 465, 467, 506 read with Section 34 of the Indian Penal Code.

2. Heard Mr. Patankar, learned counsel for the Applicant and Mr. Nakhawa, learned APP for the State. Perused record of investigation.

3. Record indicates that, by an Order dated 20th September 2019, the Applicant was granted interim relief and was directed to attend the Investigating Officer on stipulated dates, and thereafter, as and when called.

4. The First Information Report is lodged by Mr.Sanjay Bhanushali. It is the prosecution case that, the Applicant alongwith Gitesh Bhanushali and

Kailash Bhanushali was partner of M/s. Fine Homes, a firm, which was undertaking work of development of properties. That, the informant got acquainted with Gitesh Bhanushali and Kailash Bhanushali, when the said two persons informed the informant that, the Applicant is also their partner in business. The informant alongwith his father namely Mr.Premji Bhanushali was intending to purchase residential premises near Navi Mumbai and therefore, in view of representations made by Gitesh Bhanushali and Kailash Bhanushali, the informant decided to purchase two flats in a building, which was being constructed by the said firm. The consideration of each flat was agreed to be paid by the informant as Rs.25,00,000/- totalling to Rs.50,00,000/-. It was also decided between them that, if the firm fails to deliver possession to the informant within stipulated period, an amount of Rs.34,00,000/- instead of Rs.25,00,000/- per flat would be refunded to the informant. Believing on the representations and promises made by the partners of the said firm, an MOU was executed and it was decided that, the firm of the Applicant would deliver flat No.302 and 303 to the father of the informant and the informant respectively. The informant accordingly transferred Rs.50,00,000/- in the account of the said firm namely M/s. Fine Homes by cheque and RTGS. As the Applicant and his partners neither delivered possession of the suit flat nor executed agreements in that behalf, the informant contacted Mr.Gitesh Bhanushali and Mr.Kailash Bhanushali on their phones, however, they gave evasive replies. Upon making enquiry into the matter, the informant realized that, the flat No.303, which was allotted in his name, has been sold to Mr. Aniket Kurade and others and flat No.302 has been sold to Mr. Yogesh More and his wife instead of allotting to the father of the informant. The informant therefore, again approached Mr.Gitesh Bhanushali, Mr.Kailash Bhanushali and the Applicant. They dodged his enquiries and threatened him that, he will have to face serious consequences if he files police complaint. In this brief premise, the present crime is registered.

5. Mr. Patankar, learned counsel for the Applicant submitted that, the partnership deed dated 7th December 2013, executed between Mr.Gitesh Bhanushali and Kailash Bhanushali incorporates a specific clause No.14, wherein it was agreed that, all the documents/agreements/purchase and sales of assets etc. executed for and on behalf of the firm would be operated by any of two partners, subject to compulsory signature of the second party i.e. the Applicant herein. He submitted that, the Applicant being second party to the said agreement, his signature was not obtained by the other two partners while executing MOU with the informant and his father.

He submitted that, the other two partners opened Bank Account in the name of firm with Dena Bank without obtaining his signature. That, the amounts paid by the flat purchasers were deposited in the said account and the other two partners thereafter siphoned it and had defalcated it. He submitted that, Applicant has no role to play in withdrawal of the amounts of customers from the account of the said firm. He submitted that, when the Applicant realized that, the other two partners are trying to cheat him, he lodged a complaint with Vashi Police Station on 4th February 2016. That, the Applicant also executed deed of retirement on 26th July 2016. He further submitted that, as the Police did not take cognizance of his complaint, the Applicant has filed a private complaint and the learned Magistrate has issued an Order under Section 156(3) of Cr.P.C. in that behalf.

He submitted that, in furtherance of Order dated 20th September 2019, the Applicant has attended the concerned Investigating Officer and as per his instructions, the Applicant has cooperated in the process of investigation. He, therefore, prayed that the Applicant may be protected by pre-arrest bail by allowing present Application.

6. Perusal of record indicates that, Partnership Deed dated 7th December 2013 was registered with the Registrar of Partnership Firms, Maharashtra State, Mumbai, on 18th December 2013. It further appears that, after the informant realized that, he has been cheated by the Applicant and his partners by not delivering possession of the suit property within the stipulated period and in fact the firm of the Applicant has sold the said two flats to third parties, the informant approached the Applicant and his partners.

Sensing the prospective danger of lodgement of crime, it appears that, the applicant has swiftly filed a complaint on 4th February 2016 with Vashi Police Station, Navi Mumbai. It appears that, the Police have not rightly taken into consideration his complaint, as the Applicant tried to create defence in his favour before lodgement of a crime. As far as the submission of the learned counsel for the Applicant that, the Applicant has also lodged a complaint under Section 156(3) of the Cr.P.C. is concerned, prima facie it appears to this Court that, the same is also a designed defence adopted by the Applicant for fleecing from clutches of law.

7. The First Informant in his report has categorically stated that, the other two partners introduced the Applicant as their partner in the said Firm. The partnership deed dated 7th December 2013 clearly mentions in its recital that, the Applicant was having 50% of the share in the said partnership business. In this background, the contention of the Applicant cannot be accepted that, he was not aware of the affairs of the partnership firm and other two partners duped him in the business. The record clearly indicates that, the Applicant was having substantial interest in the affairs of the said firm and the contention that, he was a sleeping partner in the said firm, cannot therefore be accepted at its threshold. A bare perusal of partnership deed clearly indicates that, there is no clause incorporated in it that, the Applicant was a sleeping partner.

8. The record of investigation further reveals that, the Applicant was a signatory to the account opening form of the said firm, which was submitted to the Dena Bank. The Act of the Applicant alongwith other accused in not refunding the amount of informant and selling the said flats to a third person clearly indicates that, he had intention to commit the offence of cheating against the informant and his father since inception. It therefore, prima facie appears to this Court that, the complicity of the Applicant in the present crime is apparent.

9. A useful reference at this stage can be made to the celebrated judgment of the Supreme Court reported in **(1997) 7 SCC 187** in the case of **State Rep. by the C.B.I. Vs. Anil Sharma** wherein the Supreme Court has laid down the ratio on the point, when bail under Section 438 of Cr.P.C. should not be granted to an applicant holding high position or welding considerable influence. The Supreme Court has held that :-

> "Custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is

> interrogated. Very often interrogation in such a condition would reduce to a mere ritual."

In view thereof, even though the Applicant had attended the Investigating Officer on the stipulated dates under the directions of this Court, it is of no avail for the purpose of investigation. The Investigating Officer is yet to custodially interrogate the Applicant to bring out the entire truth behind the crime and his exact role in it.

10. After taking into consideration, the serious allegations against the Applicant and gravity of the offence, this Court is of the view that, the Applicant does not deserve to be protected by pre-arrest bail.

The present Application is accordingly rejected.

11. At this stage, learned counsel for the Applicant submitted that, the Applicant intends to challenge present Order before the Hon'ble Supreme Court, and therefore, the operation of it may be stayed for a period of two weeks.

At the request of learned counsel for the Applicant, the operation and effect of the present Order is stayed for a period of two weeks from the date of uploading of the present Order on the High Court website.

[A.S. GADKARI, J.]