

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

ANTICIPATORY BAIL APPLICATION NO. 2075 OF 2019

**SNEHA
NITIN
CHAVAN**

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Date: 2021.12.04
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Sachin Anant Patil and Anr. .. Applicants
V/s.

The State of Maharashtra ..Respondent

**INTERIM APPLICATION NO. 1238 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO. 2075 OF 2019**

Shriniwas Bandu Benkhale .. Applicant/Intervenor
V/s.

The State of Maharashtra ..Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2076 OF 2019**

Sachin Anant Patil & Anr. .. Applicants
V/s.

The State of Maharashtra ..Respondent

**INTERIM APPLICATION NO. 1239 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO. 2076 OF 2019**

Shriniwas Bandu Benkhale .. Applicant/Intervenor
V/s.

The State of Maharashtra ..Respondent

Mr. Aniket Vagal for the Applicants.

Mr. S.H. Yadav,APP for the Respondent/State.

Mr. Santosh Patil a/w Ms. Anusha Amin i/b P.S. Gole for the complainant.

API Santosh Pawar, EOW 2, Navi Mumbai present in ABA/2075/2019.

PSI Dhanraj Kedar, EOW-2, New Mumbai present in ABA/2076/2019.

CORAM : C.V. BHADANG, J.

DATE : 03 DECEMBER, 2021

P.C.

1. By these applications, the Applicants who are apprehending arrest in connection with investigation of Crime No. 49 of 2019 and 50 of 2019 which are presently being investigated by E.O.W., Navi Mumbai under Section 409, 420, 470, 471, 406 read with Section 34 of IPC are seeking anticipatory bail.

2. The aforesaid offences are registered on the basis of complaint lodged by Shriniwas Benkhale who is the intervenor.

3. The Applicant Roshan Patil, was allotted a plot of land in the year 2009 from CIDCO under 12.5% scheme. The Applicant Roshan Patil had entered into a tripartite development agreement in respect of said plot with Mr. Parbat Gothi in the year 2010. The material allegation is that the Applicant Roshan Patil again entered into an agreement in respect of the said plot with the complainant in November 2011 and accepted an amount of Rs.1 crore by cheque

towards consideration from the complainant. When it was disclosed that the Applicant Roshan Patil had entered into two successive agreements in respect of the same plot, the Applicant Roshan Patil represented to the complainant that instead of returning amount, he will ensure that another plot of CIDCO which was allotted to his brother Sachin Patil would be given to the complainant.

4. According to the complainant, the Applicants by showing a bogus and fabricated letter from CIDCO again accepted certain amount, this time for the purpose of an agreement in respect of plot of Applicant Sachin Patil. It also appears that Applicant Sachin Patil issued two cheques in favour of the complainant for Rs.1 crore each, which got dishonoured on presentation and in respect of the same two separate complaints under Section 138 of the Negotiable Instruments Act, were filed by the complainant. It transpires that in one of the complaints, the Applicant Sachin Patil has been convicted, which order is subject matter of challenge before the learned Sessions Judge in which the Applicant has deposited an amount of Rs.7 lakhs. It is a matter of record that the complaint in respect of the other cheque is pending before the learned Magistrate.

5. Thus, the material allegation is about Applicant Roshan Patil having entered into an agreement with the complainant in November 2011 in respect of the plot for which he had earlier entered into a tripartite agreement in June 2010 with Mr. Parbat Gothi. The subsequent part is about the representation that plot of brother Sachin Patil would be given to the complainant after accepting a further amount which also did not materialise and the third part is about the dishonour of the cheques.

6. I have heard the learned counsel for the Applicant and the learned APP. I have also heard the learned counsel for the Respondent/complainant. With the assistance of the learned counsel for the parties, I have gone through the record.

7. Before adverting to the rival submissions and the merits of the matter, it is necessary to note that an attempt was made to see that the parties amicably settle the matter, as the parties had expressed willingness to explore the possibility of settlement and time was granted. However, unfortunately the settlement did not materialise and therefore, the applications have to be decided on their own merits.

8. The learned counsel for the Applicants submitted that there are two cheques issued and therefore, the complaint in respect of the same transaction alleging offence under Section 420 of IPC cannot be sustained. The learned counsel has placed reliance on the decision of the Supreme Court in *G. Sagar Suri & Anr. v/s State of Uttar Pradesh and Ors.*¹ and *Kolla Veera Raghav Rao v/s. Gorantla Venkateshwara Rao & Anr.*² in order to submit that once there is a complaint in respect of the dishonour of the cheque, the Applicant cannot again be tried or punished on the same facts under Section 420 or any other provisions of IPC or any other Statute. It is submitted that although the Applicants are not disputing the receipt of amount from the complainant, the Applicants have made bonafide attempt to repay the same. The learned counsel for the Applicants submits that on account of pandemic, it was not possible for the Applicants to arrange the amount immediately and therefore, Applicants have expressed willingness to repay it in installments. It is submitted that the Applicants have cooperated with the investigating agency and no useful purpose would be served by their arrest.

1 (2000)2 SCC 636

2 (2011)2 SCC 703

9. The learned APP and the learned counsel for the complainant/intervenor submitted that the offence is serious and receipt of the amount of Rs.1 crore and subsequently in respect of the transaction of plot belonging to Sachin Patil are not disputed. It is submitted that the investigation so far and the recovery of certain documents has disclosed that certain letters purportedly issued by the CIDCO have been forged and have been used in the transaction. The learned APP therefore, on instructions stated that custodial interrogation of the applicants is necessary.

10. I have given my anxious consideration to the rival circumstances and the submissions made. *Prima facie*, the fact about the Applicant Roshan Patil having executed two agreements, one in June 2010 in favour of Mr. Parbat Gothi and subsequently, in November 2011 in favour of the complainant, in respect of the same plot, is not disputed. Even the receipt of amount is not disputed. These transactions are of the year 2011 and till today, except an amount of Rs.7 lakhs, which is deposited by the Applicants before the learned Sessions Judge, no other payment has been made. In my considered view, *prima facie* the transaction in respect of the execution of agreement in favour of the complainant and the acceptance of Rs.1 crore is distinct from the offence under Section

138 of the Negotiable Instruments Act regarding dishonour of the cheques. In the case of Kolla Veera (supra), before the Supreme court, the prosecution under Section 420 was in respect of the same transaction which was subject matter of the cheque, unlike in the present case, where execution of the successive two agreements is distinct from the dishonour of the cheques. The facts in G. Sagar (supra) are also distinguishable on similar count. The learned APP has pointed out that there is recovery of certain documents which *prima facie* shows that forged/fabricated letters/notices from CIDCO were allegedly used in the transaction. In such circumstances, in my considered view, the custodial interrogation of the Applicants would be necessary. It is now well settled that custodial interrogation is qualitatively different than interrogation where the accused is armed with an order of anticipatory bail. In my humble opinion the proper investigation of the offence is the paramount consideration at this stage.

11. In that view of the matter, Criminal Application Nos. 2075 of 2019 and 2076 of 2019 are hereby dismissed. Interim Application Nos. 1238 of 2019 and 1239 of 2019 are accordingly disposed of.

12. At this stage, Mr. Vagal the learned counsel for the Applicants on instructions seeks time to surrender before the Investigating Officer. The learned APP and the learned counsel for the Respondent/complainant have opposed the same. However, considering the fact that interim protection was operating from 24.09.2019, three weeks time is granted to the Applicants to surrender before the Investigating Officer.

(C.V. BHADANG, J.)