

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1745 OF 2022
ALONGWITH
INTERIM APPLICATION NO.2330 OF 2022
AND
INTERIM APPLICATION NO.3670 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.1745 OF 2022**

Bhupendra Naranbhai Anghan Patel] .. Applicant
vs.
State of Maharashtra] .. Respondent

Mr.Niranjan Mundargi a/w Sujit Shelar for the Applicant.

Ms.Manjula Rao a/w Vaishali Bhikule and Sarika Gawade i/b
Manmohan Rao for the Intervenor in IA No.3670/2022.

Smt.A.A. Takalkar, APP for the State.

API Arjun Pawar, Arnala Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 14th NOVEMBER, 2022.

P.C.

1] Heard the learned counsel for the Applicant and the learned counsel for the Intervenor, as well as the learned APP for the State.

2] The Applicant is apprehending his arrest in CR No. 198/2022 which invoke offences punishable under Section 452, 448, 341, 409,

504, 506 read with 34 of the Indian Penal Code, and the complaint is lodged for the period from 01.01.2018 to 26.09.2020.

3] The complainant as well as the Applicant alongwith Chetan Salla, were termed as “retiring partners” and their entitlement was set out by the said Deed. The Applicant was held entitled to various shops/units/flats . The market value of which was ascertained as Rs.72,50,136.00. As against this, the complainant was held entitled for 8 units/shops, the market value of which was quantified as Rs.2,82,10,602.42.

The terms and conditions of the settlement deed record that the parties have settled their dispute amicably and finally through the process of mediation and conciliation. It was agreed between the parties that the “retiring partners” who have retired from the firm are entitled to receive total consideration in the form of premises of value totaling to Rs.11,25,00,000/- as and towards full and final consideration towards retirement, as agreed by the continuing partners.

The parties also agreed that the terms have been settled by mutual consent.

4] When the deed is perused, it is seen that it is agreed between the parties that model agreements shall be executed and registered with the prospective shop/ flat purchasers and continuing partners shall execute in all 39 such Agreement for Sale. It was also agreed that the second part i.e. continuing partners shall hand over such signed and executed Agreements for Sale to the retiring partners. The retiring partners were at liberty to receive the agreed purchase price from the respective shop/flat purchasers and deliver such signed and executed agreements to such prospective purchasers.

5] The Settlement Deed, not being in dispute, the dispute revolve around the Deed of Power of Attorney, on the basis of which, it is alleged by the complainant that these galas belong to him and the same have been sold by one Mr.Hardik Anghan on the basis of Power of Attorney executed on 31.10.2018. The said Deed of Power of Attorney is between Mr.Purushottambhai Shankarbhai Patel and Mrs.Jyotsna Patel-the continuing partners and Mr.Hardik Ramjibhai Anghan.

6] My attention is specifically invited to clause 11 of the Terms of Settlement, where it was contemplated, that the second part i.e. continuing partners shall appoint, nominate and constitute Mr.Ramjibhai Mavjibhai Anghan, by a separate Deed of Power of Attorney. Instead of Ramjibhai his son Hardik has been assigned with the Power of Attorney.

Agreement in favour of Mr.Chandrakant Kakadiya, one of the purchaser, is also placed before me where the recitals clearly contemplates that M/s. Sridutt Construction a partnership firm by its partners Mr.Purushottam Patel and Mrs.Jyostna Patel, described as promoter, have entered into Agreement with the prospective purchasers for a lawful consideration.

It is nowhere reflected from the said Agreement that the present applicant had sold such property by the Agreement to Sale.

7] When the learned APP is specifically confronted with the Deed of Settlement Agreement dated 22.05.2018, she categorically admit this fact, in the presence of the Investigating Officer, on the basis of investigation which she has carried out; firstly, even on date, the complainant continue to be in possession of 6 galas referred to in the

complaint and secondly the consideration received towards Agreement of Sale of six galas is lying in the escrow account of M/s.Sridutt Construction.

8] In the wake of aforesaid admission by the Investigating Officer, I do not think that the Applicant can be connected with Section 409 of the IPC as no loss has been caused to the complainant as on date and his interests are equally placed as that of the Applicant who is also a retiring partner. It is also informed that the respective parties have filed civil proceedings before the competent Court of law and have sought injunction. It is ultimately for the civil Court to determine their rights in respect of Settlement Deed entered between continuing partners and retiring partners. With a specific statement being made by the learned APP to the above effect that custodial interrogation of the applicant is not warranted, he deserve protection from arrest subject to the stipulation that he shall report to the Investigating Officer and co-operate in the investigation.

9] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and shall not in any way influence the Civil Court while deciding the civil rights of the parties in their respective suits.

10] I must clarify here that the the earlier statement made before this Court on 30.06.2022 about handing over galas was in the form of mis-statement as the then counsel appearing made the statement without adverting to the factual aspect of the case. The Applicant is relieved of the said statement.

Hence, the following order :

ORDER

- (a) Application is allowed.
- (b) In the event of arrest in connection with C.R.No.198/2022 registered with Arnala Sagari Police Station, the applicant Bhupendra Naranbhai Anghan Patel shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall report to the concerned police station as and when called for.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.
- (e) Interim Applications are also disposed off.

[BHARATI DANGRE, J]