IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2597 OF 2021

Akshay Anil Zawar ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Priyal Sarda i/b. Mr. Anoop Lohati, for the Applicant
Mr. Chaitanya Nikte i/b. Mr. Piyush Raje, for the Intervener.
Mr. Y.Y. Dabake, APP, for the State.

CORAM : N. J. JAMADAR, J.
DATE : JULY 08, 2022

P.C.:

1. This is an application for pre-arrest bail in connection with C.R. No.588 of 2021 registered with Nasik Rural police station for the offences punishable under sections 420, 467, 471, 504 and 506 of the Indian Penal Code, 1860 and sections 39, 44 and 45 of the Maharashtra Money-Lending (Regulation) Act, 2014.

2. Sunil Palod (the first informant) is an agriculturist. He holds agricultural land bearing Gut No. 321/2 at Jalalpur Shivar, in common. The first informant had friendly relations with the applicant. In the month of January, 2017 the first informant had availed a hand-loan of Rs. 2 lakhs from the applicant. The later charged interest @ 3% p.m despite not having any money lending license. When the first informant offered to repay the said amount

of Rs. 2 lakhs, the applicant falsely claimed that he had in fact advanced Rs. 20 lakhs and demanded a huge amount of Rs. 1,62,21,000/- calculated with interest at an exorbitant rate of 10% p.m. The applicant allegedly got executed a sale deed of the land bearing Gut No. 321/2, by way of security. The applicant also made the first informant to open an account in Axis Bank and deposited the amount therein to show the consideration for the said sale and subsequently withdrew the amount from the said account by using debit card. The applicant had promised to re-convey the said amount after repayment of the amount which was allegedly due to him. The first informant alleges that in pursuance of the understanding the applicant executed an earnest note in favour of Ravindra Ostval in respect of the said land and the first informant also signed the same as a confirming party. Yet, on 22nd September, 2021 the applicant allegedly visited the house of the first informant accompanied by three unknown persons, who appeared to be rowdies, and demanded a sum of Rs. 2 Crores towards unpaid interest and threatened the applicant out of his life. Hence, the first informant lodged the report.

3. The learned counsel for the applicant submitted that the first informant lodged a false report suppressing the material facts and

multiple transactions which bear upon the dispute between the applicant and the first informant. In fact, the first informant Sunil Palod and Ravindra Ostval had lodged a complaint against the applicant with Panchwati police station on 15th September, 2021. In the said complaint, the first informant had claimed that though the sale deed was executed by the first informant on 3rd July, 2019 in favour of the applicant, the underlying transaction was of money lending. In the said complaint, the first informant alleged that he had availed a sum of Rs. 20 lakhs over a period of time from the applicant. However, the applicant was demanding more amount than due from the first informant. In the said complaint, the police had called the applicant and even the statement of the applicant was recorded. Suppressing the said fact, the first informant lodged the instant report with Nasik Rural police station. It was further submitted that the applicant purchased the land for a valuable consideration through banking channels. Thus, the allegations of illegal money lending are ex facie untenable.

4. The learned APP, on the other hand, submitted that though the sale deed executed and registered on 3rd July, 2019 records that the consideration of Rs. 39 lakhs has been paid through banking channels yet the applicant has withdrawn the said amount by using

debit card of the first informant. To bolster up this submission learned APP banked upon a statement of account of the first informant which indicates that amounts were withdrawn within days of the respective deposits. It was submitted that the said modus operandi was resorted to, to give a colour of genuine transaction. First informant has also placed on record documents to substantiate aforesaid prosecution version.

5. I have carefully considered the allegations in the first information report and the material on record.

6. By an order dated 29th October, 2021, noting that a case for interim relief was made out, this Court had granted protection from arrest to the applicant.

7. The submission on behalf of the applicant that the version in the first information report is at variance with the previous complaint lodged by the first informant herein, appears to carry substance. The gravamen of indictment in the instant first information report is that the applicant had advanced a sum of RS. 2 lakhs only; whereas in the complaint dated 15th September, 2021 lodged with Panchawati police station, the first informant claimed

that the applicant has paid a sum of Rs. 20 lakhs over a period of time and in lieu thereof a sale deed was got executed by way of security. In the first information report in question, an endevour is made to show that the applicant falsely claimed that he had advanced a sum of Rs. 20 lakhs and not Rs. 2 lakhs.

8. Secondly, the sale deed in respect of the subject land executed on 3rd July, 2019 records that consideration was paid through banking channels, during the period 11th May, 2018 to 4th July, 2019. This payment of consideration appears indisputable. The first informant, however, alleges that immediately after making deposit, within days, the applicant withdrew the said amount in a staggered manner by using a debit card. At this juncture, prima facie, it emerges that conveyance is supported by consideration.

9. Thirdly, as many as 17 persons have executed the said sale deed as consenting parties. It appears that these parties gave consent to convey the land admeasuring 12 Are land out of the Gut No. 321/2 as the said land was jointly purchased by the consenting parties and the first informant and the later only had 12 Are share in the said land. The question as to whether the transaction between the parties was other than the one which the tenor of

document prima facie denotes, is per-dominantly a civil dispute.

10. As the claim of the applicant of having purchased the land is supported by a registered conveyance, which, in turn, is supported by passing of consideration through banking channels, a prima facie case is made out for grant of pre-arrest bail. Even otherwise, the allegations in the first information report do not make out imperativeness of custodial interrogation for effective investigation. The applicant appears to have roots in the society. Possibility of fleeing away from justice seems remote. A direction to the applicant to join the investigation would ensure unhampered investigation as well.

Hence, the following order.

ORDER

1] The application stands allowed.

2] In the event of arrest in connection with C.R. No.588 of 2021 registered with Nashik Rural police station, the applicant Akshay Anil Zawar be released on bail on furnishing a P.R. Bond in the sum of Rs. 30,000/- with one or two sureties in the like amount.

3] The applicant shall cooperate with the investigation and attend Nashik Rural police station on every alternate Saturday in between 10 am to 1 pm for a period of three months or till filing of the charge-sheet whichever is earlier.

4] The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

5] The applicant shall regularly attend the proceedings before the jurisdictional Court.

(N. J. JAMADAR, J.)