

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.441 OF 2023

Santosh Shankar Varma ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.302 OF 2023

Vijaylaxmi Rameshchandra Shukla ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Ashley Cusher for the Applicant in ABA/441/2023.

Mr. Aabad Ponde, Senior Advocate a/w Mr. Jugal Kanani for the
Applicant in ABA/302/2023.

Mr. H. J. Dedhia, APP for the Respondent-State.

Mr. S. C. Kengar, PSI, Tulinj Police Station.

CORAM : S. M. MODAK, J.

DATE : 17th APRIL, 2023

P.C.

1. Heard Mr. Cusher, learned Advocate for the Applicant
in ABA/441/2023, Mr. Ponda, Senior Advocate for Applicant in

ABA/302/2023 and Mr. Dedhia, APP for the Respondent-State.

2. The Applicant-Santosh S. Varma in ABA/441/2023 is a supervisor/caretaker appointed by the partnership firm by name ABS Enterprises. There were three partners in the said firm, one is Vijaylaxmi, other two are, one-Atulkumar Dubey and Nita Dubey.

3. This Court as per the order dated 17th February 2023 passed in ABA/441/2023 has directed that the Applicant shall not to be arrested till next date, whereas this Court as per the order dated 31st January 2023 passed in ABA/302/2023 was pleased to grant interim protection to the Applicant Vijaylaxmi.

4. I have heard respective counsels on the point whether to continue with the said protection or to vacate it.

5. After hearing both the sides and after perusing the record. I am of the view to confirm the interim protection. I will give reasons hereinafter.

6. As said above Atulkumar Dubey and his wife Nita Dubey are concerned, were the partners alongwith the

Applicant-Vijaylaxmi. They were in the business in name of ABS Enterprises on the partnership basis. They have also demarcated their shares. The firm has undertaken the construction at Survey Nos.34 and 36. The building was also constructed. Unfortunately, the partner-Atulkumar expired on 6th December 2018. Nita Dubey and Atulkumar Dubey are survived by three minor children. They are Kumari Vaishnavi Atulkumar Dubey, Ms. Shrushti Atulkumar Dubey and Master Virat Atulkumar Dubey. On the Application made to the competent court, the first informant-Rajesh Dubey is appointed as guardian for the person and property of three minors. The said Rajesh is their uncle.

7. The Applicant-Vijaylaxmi sold one Flat No.203, vide registered Agreement dated 27th July 2022 for consideration of Rs.20,00,000/-. The copy of Registered Agreement is annexed to the Application.

8. The grievance of the first informant is that the said flat was sold without his consent and she has misappropriated that amount and hence, the complaint is lodged with Tulinj Police

Station on 23rd December 2022 for offence punishable under Section 420, 406 read with 34 of the Indian Penal Code, 1860.

The present Applicant-Vijaylaxmi is accused No.1 and present Applicant-Santosh is Accused No.4, whereas Accused No.2-Sarika and Accused No.3-Avinash are the office bearers of the society in which the flat is situated and they have given consent for sale of the said flat. They have been granted anticipatory bail by the learned Additional Sessions Judge, Vasai.

9. During arguments, learned Senior Advocate Mr. Ponda, submitted that without prejudice to the contentions, his client is ready to deposit an amount of Rs.20,00,000/- in the Court and he states that custodial interrogation is not required. Whereas, Mr. Cusher, learned Advocate for the Applicant submitted that his client is not a party to the Registered Agreement, but the only allegation is that some amount is transferred to him.

10. Learned Advocate for the first informant submitted that guardianship certificate has been granted by the Court of Additional Sessions Judge, Vasai. He invited my attention to the said certificate. It is true that certain immovable properties are

also described in the said certificate. He wants to raise one contention that the consideration of the agreement is undervalued. According to him, even though the consideration mentioned in the agreement is Rs.20,00,000/-, infact the market value is much more. He wants to impute a fraudulent intention on the part of Applicant-Vijaylaxmi. He submitted that if at all, the condition to deposit the amount is to be imposed, let it be market valuation which comes to Rs.23,14,000/-.

11. Learned APP invited my attention to statement recorded by husband of present Applicant-Vijaylaxmi by name Rameshchandra Shukla. He read over portion from his statement. That statement is recorded by the Police during investigation. He has said that in the guardianship certificate issued by the Court, there is no reference of the present flat in question, whereas according to the learned Advocate for the first informant, there is no propriety to record the statement of husband of first informant-Vijaylaxmi.

12. Considering the fact that the Applicant-Vijaylaxmi has shown readiness through learned Senior Advocate. I have heard

the respective counsel, even though the investigating officer is not present.

13. Considering the allegations and willingness to deposit the amount, case for confirmation is made out. On this background custodial interrogation is not required. Applicant Santosh has limited role. Rest of the issues can be agitated before the Competent Civil Court.

14. This Court has tried to convey to respective parties through their respective counsel to explore the possibility of settlement and even the name of Retired Justice Shri. S. K. Shinde was also suggested. However, for some reason and other, it could not be worked out. Let the parties to agitate their rights before the Competent Civil Court. Hence, the following order is passed:-

ORDER

- (i) The interim protection granted to the Applicant-Santosh Shankar Varma in ABA/441/2023 and Applicant-Vijaylaxmi Rameshchandra Shukla in ABA/302/2023 is confirmed.

- (ii) In case of arrest of the Applicants in connection with C.R. No.822 of 2022 registered at Tulinj Police Station for the offences punishable under Sections 406, 420 read with 34 of the Indian Penal Code, 1860, the Applicants be released on furnishing personal bond and surety bond of Rs.25,000/- each. (this direction was issued because in the interim order there was no such direction in ABA/441/2023).
- (iii) Both the Applicants are directed to co-operate the Police, as and when required.
- (iv) The willingness shown by learned Senior Advocate Mr. Ponda for the Applicant-Vijaylaxmi in ABA No.302 of 2023, to deposit of Rs.20,00,000/- is accepted as an undertaking to the Court.
- (v) Let it be deposited before the concerned Court of learned Judicial Magistrate, First Class, Vasai within a period of three weeks from today.
- (vi) Both the Applications are disposed of.
- (vii) The learned J.M.F.C., Vasai is at liberty to pass appropriate order about the said amount after hearing the parties.

15. These are my prima facie observations and the trial Court may not be influenced by that.

16. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]