IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 554 OF 2024

Ashish Rajesh Nai ..Applicant
Versus
The State of Maharashtra ..Respondents

Mr. Rajendra Rathod a/w. Mujtaba Shaikh a/w. Zeeshan Sardar for Applicant.
Ms. Rajeshree V. Newton, APP for State/Respondent.
Mr. Yusuf Khan for Intervenor.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 5 MARCH 2024

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 54 of 2024 registered at Ghatkopar Police Station, on 12.01.2024, under Sections 420, 465, 467, 468 r/w. 34 of the Indian Penal Code.

2. Heard Mr. Rajendra Rathod, learned counsel for the applicant, Ms. Rajeshree Newton, learned APP for the State and Mr. Yusuf Khan, learned counsel for the Intervenor.

3. The F.I.R. is lodged by one Jatin Dasriya. He has stated

that, he is in the business of construction of buildings. He has a company by the name M/s. Vrux Realty LLP. In 2019, one estate agent named Mukul Acharya approached him and told him about a property at Survey No.115, Hissa No.5, CTS No.1789, admeasuring 3200 sq.mtrs. at Ville Parle. Mukul Acharya told the informant that the said property was in the name of Hector Misquitta and his family. A power of attorney in respect of that property was given by the owners to one Bechanram Gupta. He further told the informant that the present applicant was looking after the transaction in respect of that property on behalf of Bechanram. After that, Mukul Acharya and the present applicant came to the informant's office with documents related to that property. They showed the power of attorney, property card and CCTS plan. Mukul Acharya told the informant that the applicant had spoken with the original owners and they were willing to sell that property. Mukul Acharya took Rs.4 lakhs from the informant on 01.09.2019. The balance amount was to be paid subsequently.

4. The informant, Mukul and the applicant went to the property and saw it. There were residential houses and commercial

blocks. The applicant, Bechanram and Mukul promissed to give vacant possession of the land to the informant. On their representation, the informant agreed to purchase that property for Rs.11 crores. It was also agreed that, after the construction was completed some constructed rooms were to be given to the informant. On 21.08.2020, the informant's company and Bechanram, as well as, Hector Misquitta and his family were to prepare a term-sheet. Bechanram's heath was not good, therefore, the applicant and Mukul Acharya purportedly went to the house of Bechanram and Hector Misquitta and his family. They got their signatures on the term-sheet and brought it to the informant's office. The applicant and Mukul Acharya had notarized that document.

5. On 02.09.2020, an MoU was prepared. The informant signed it. After that, Mukul and the present applicant again went to the houses of Bechanram and Hector Misquitta and his family. They purportedly got their signatures, and that document was also notarized. The informant was told that, Bechanram and Hector Misquitta and his family were taken to the Court for notarizing

that document. The informant's company handed over the cheques of Rs.51000/- each to the applicant; for every family members of Hector Misquitta's family. Bechanram was given separate payment by two cheques of Rs.7,94,000/- and Rs.32,51,000/-. After the MoU was executed, the informant's account did not show debit in favour of Hector Misquitta and his family, therefore, he got suspicious. The applicant and Mukul Acharya told him that, they had paid the owners through cash. Subsequently, the informant never got possession of the plot. He made enquiries. He came to know that some of the signatures on the term-sheet and the MoU were forged. Some members of the Misquitta family had passed away and yet their signatures were made on those documents. He also came to know that the said property was sold by the accused to two to three other people. On this basis, the F.I.R. was lodged.

6. Learned counsel for the applicant submitted that the transaction, as alleged, had taken place in the year 2020. The F.I.R. is lodged on 12.01.2024, hence, there is a delay in lodging the F.I.R. He submitted that the informant had sent a notice dated 17.09.2021 to Bechanram and his son Rohit U/s.138 of the

Negotiable Instruments Act, for dishonour of the cheque. In that notice, the allegations made in the F.I.R. are not mentioned. He submitted that the entire investigation depends on the documents which are already available with the police and, therefore, for that purpose custody of the applicant is not necessary. The applicant has not played any part in the transaction.

7. Learned APP opposed these submissions. She produced the investigation papers before me. The important documents are the term-sheet, the MoU and the statement of Ivar Misquitta. She submitted that, around that time of execution of those documents, the applicant has received the amounts from the account of Bechanram's son Rajkumar. There is a bank entry dated 09.09.2020 which shows that Rs.15 lakhs were paid to him through the account of Bechanram's son Rajkumar. This directly related to the transaction with the applicant.

8. I have considered these submissions. The aforementioned term-sheet dated 07.08.2020 bears signature of the applicant as a witness; as per the prosecution case. This

document also bears signatures of the family members of Hector Misquitta. Thereafter, a notarized MoU dated 02.09.2020 was executed which bears signatures of the family members of Misquitta family. The important signatures are of Hector, Iver and Vincent. Out of them, the investigation papers show that, Hector Misquitta had passed away on 19.02.2014 i.e. much before the execution of the aforesaid two documents. The statement of Iver Misquitta mentions that he had not signed those two documents. Moreover, even Vincent had passed away in 2017, therefore, his signature could not be there on those two documents. Thus, it is quite clear that both these documents are forged. The applicant is the direct beneficiary as is demonstrated by the learned APP through the bank account entries. The statement of Iver shows that the applicant had approached him and had told him about the possible transaction. At that time, Iver had told him that the property was already sold in the year 1983. Therefore, the applicant was well aware of this history and yet he induced the informant to part with a huge amount. He has derived monetary benefit in the transaction. He is instrumental in forging the two documents. The offence is serious. His custodial interrogation is necessary. Therefore, no relief can be granted to the applicant U/s.438 of the Cr.p.c.

9. The application is rejected.

(SARANG V. KOTWAL, J.)