Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1012 OF 2024

Asha Amit Vanani ...Applicant

Versus

The State of Maharashtra and anr. ...Respondents

Mr. Aabad Ponda, Senior Advocate, a/w Kiran Varma, Sharila D'souza, Gopal Kirshna Nayak, i/b Flavia Legal, for the Applicant.
Mr. Tanveer Khan, APP for the State/Respondent No.1.
Ms. Divya Bhatia, h/f Saurabh Ghag, for Respondent No.2.
PC Goraksha Maruti Shephade, Crime Branch, Thane City, present.

CORAM: N. J. JAMADAR, J.
DATED: 1st APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the applicant, the learned APP for the State and Ms. Bhatia, the learned Counsel for respondent No.2.

2. The applicant, who is arraigned in CR No.60 of 2023 registered with EOW, Mumbai, (original CR No.341/2023 registered with DB Marg Police Station) for the offences punishable under Sections 120B, 420, 465, 467, 468 and 471 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge her on bail.

Order is corrected as per order dated 4/4/42024.

3. Amit Vanani (A3) is the husband of the applicant. Amit (A3), his father Gowardhan (A1) and Anil Vanani, the nephew of the Gowardhan (A1), were the partners of Niru Impex, a firm dealing in diamonds. Niru Impex had dealings with M/s. Samir Gems N. V. (M/s. Samir) and M/s. ACE Diamonds Ltd., the entities of Mr. Samir Bhansali, the brother of Sanjay Bhansali, the first informant. During the period September, 2006 to June, 2007 Niru Impex and its partners – the co-accused, had allegedly purchased diamonds worth of Rs.41,73,04,051/- from M/s Samir and M/s. ACE Diamonds by making a representation that they would pay the price of those diamonds within 120 days. The first informant alleged accused Nos.1 and 3 bought time to make payment of the price of the diamonds sold and delivered on one or the other pretext. Accused Nos.1 and 3 did not convey the property, as agreed. Initially, the informant party was forced to accept conveyance of a property bearing No.91/3 situated at Katargram, Surat, which stood in the name of Amritaben (A2), the wife of Govardhan (A1). Subsequently, the informant party was coerced to re-convey the said land by falsely representing that the matter would be settled. Eventually, the informant party purchased the land situated at Survey No.1376, Pardi Gaon, Parnera, Valsad, admeasuing 14756.68 sq. mtrs. comprising of 60 plots in the name of the company of the first informant. In the month of November, 2018, accused Nos.1 and 3 refuted the liability to pay outstanding amount and declined to transfer any property. Thereupon FIR came to be lodged.

4. It further transpired that in the intervening period, accused Nos.1 and 3 had acquired multiple immovable properties in the name of their relatives and associates and those properties were eventually transferred in the name of the applicant. More than 200 properties have been registered in the name of the applicant, which were allegedly fraudulently transferred in the name of the applicant.

5. At the outset, Mr. Ponda, the learned Senior Advocate for the applicant, submitted that the principal accused i.e. accused Nos.1 and 3, who allegedly deceived the informant party and entered into fraudulent transaction, have been granted pre-arrest bail by this Court by an order dated 6th March, 2024. The applicant was nowhere named in the FIR. She had no role in the alleged transaction between the informant party and accused Nos.1 and 3. She was unjustifiably arrested on 13th February, 2024 and has since

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been detained on the allegations that a number of properties stand in the name of the applicant.

6. Mr. Khan, the learned APP, resisted the prayer for bail. It was submitted that the investigation is underway especially as regards the 220 odd plots registered in the name of the applicant. An endeavour was made to draw home the point that the amount of which the informant party was defrauded has been utilized to acquire the plots of land which stand in the name of the applicant. It was submitted that as the investigation is still underway, the applicant does not deserve to be enlarged on bail.

7. Ms. Bhatia, the learned Counsel for respondent No.2, stoutly resisted the prayer for bail. It was submitted that the applicant is equally complicit in the offences alongwith accused Nos.1 and 3. An effort was made to explain away the delay in lodging the FIR by adverting to the representations and assurances which were allegedly made by accused Nos.1 and 3. If the applicant is released on bail there is a strong possibility of further alienation of the plots which stand in the name of the applicant and thereby the informant party would suffer further wrongful loss.

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8. First and foremost, it is necessary to note that the allegations in the FIR are primarily against accused Nos.1 and 3. It is not the case that the applicant was either a partner of, or otherwise related to, Niru Impex nor is it the case that the applicant had made any representation and induced the informant party to part with the diamonds, as alleged.

9. While granting pre-arrest bail to accused Nos.1 and 3, this Court had observed, *inter alia*, as under:

> "17. I have given anxious consideration to the rival submission. At the outset, it is necessary to note that the genesis of the alleged offences is in the commercial transactions between the parties. From the perusal of the allegations in the FIR, it becomes abundantly clear that the applicants and the informant party were dealing in diamonds for years. The informant party alleged that diamonds were supplied during the period 1995 to 2007 and the transactions in question took place during the period September, 2006 to June, 2007. It is alleged that the price of the diamonds sold under the invoices raised during the said period aggregating USD 50,27,759.64 was not paid.
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> 18. First and foremost, in the backdrop of the long standing business relationship between the parties, for more than a decade, could it be urged that the intention of the applicants was dishonest when they purchased the diamonds from the informant party in the year 2006-07 ? It is trite there is distinction between failure to perform a promise and cheating which involves the element of deceit coupled with injury. Mr. Ponda invited attention of the Court to a recent judgment of Supreme Court in the case of **Lalit Chaturvedi and Others vs. State of Uttar Pradesh and Anr. (Cr. Appeal out of SLP (Cr.) No. 13485/23)** wherein the Supreme Court reiterated the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual term; and a criminal offence under section 420 and 406 of Penal Code. The ingredient of 'cheating' is existence of a fraudulent or dishonest intention of making initial promise

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or representation thereof, from the very beginning of the formation of contract. Prima facie, it would be difficult to urge an inference that when the applicants purchased the diamonds in the year 2006-07 their intention was dishonest.

19. Secondly, the aspect of delay in lodging the report deserves careful consideration. One, the outstanding amount was not small, by any standard. Two, could the informant party remain satisfied with mere assurances and promises for over a decade ? Ordinarily the failure to pay the price of the diamonds worth more than Rs. 20 Crores, for a period exceeding six months, would have elicited an appropriate response from the informant party.

20. Thirdly, there is material to indicate that there was some sort of accord and satisfaction between the parties. In the FIR itself, the first informant refers to a number of transactions in the form of instruments executed to convey the land in favour of the informant party, purportedly in lieu of the price of the diamonds. The first informant refers to the fact that, as agreed, the applicants did not register the Power of Attorney under which rights over immovable properties were sought to be conveyed. Secondly, the first informant alleges, a registered instrument was executed in respect of property bearing Survey No. 91/3, Katargaam, Surat. The market value of which in the year 2009 was Rs. 20 Crores. It is further alleged the informant party was made to re-convey the said land in the year 2012, by making a false representation that the dispute would be settled. The promises which the applicants made in the year 2012, were not honored. If that was the case, an inference becomes inescapable that informant party realized the fraud at that point of time itself. The delay and inaction if viewed through the aforesaid prism, cannot be said to be immaterial or inconsequential.

21. Lastly, the FIR alleges the land bearing Survey No. 1376, Pardi Goan, Parnera, Valsad admeasuring 14756.68 sq. mtr. comprising of 60 plots, was purchased in the name of the company of the informant party and amounts were transferred in favour of the applicants.

22. Mr. Ponda, the learned counsel invited attention of the Court to a valuation report which indicates that the value of the said property transferred in the name of Harkashan Trading Company Private Limited, comprising of 60 plots, was Rs. 20,52,00,000/-. The said conveyance was towards the discharge of the liability allegedly owed by the applicants to Mr. Samir Bhansali.

23. In the affidavit in reply, an endeavour has been made

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on behalf of the respondent No. 2 to meet the aforesaid case of the applicants by asserting that the family members of the first informant became the Directors of Harkashan Trading Company Private Limited by investing capital of Rs. 56 lakhs and the said amount was later utilized to purchase the plots and the applicants are trying to derive advantage by combining two different transactions.

24. Prima facie, this case does not find mention in the FIR. On the contrary, in the FIR it was alleged that the first informant learnt that the applicants were selling their land situated at Valsad and thereupon the first informant party approached them and obtained the Sale Deed of those lands in favour of a corporate entity of the informant party.

25. Whether there was a compete accord and satisfaction with the transfer of the said property in favour of the informant party and/or its entity would be a matter for adjudication at the trial. However, if considered in the light of the aforesaid multiple transactions between the parties since the default in payment of the price of the diamonds purchased in the year 2006-07, in my considered view, the delay assumes critical significance.

26. An endeavour on the part of the prosecution to make allegations of fraud in multitude of transactions allegedly executed by or on behalf of the applicants does not merit countenance in the instant case. If the genesis of the offences in the instant case is kept in view, the submission on behalf of the prosecution that the inquiry has revealed many issues which warrant investigation into the affairs of the applicants generally, without any co-relation between the offences for which the applicants have been arraigned in this case, cannot be a ground to deprive the personal liberty of the applicants."

10. The aforesaid observations, especially those in paragraph 26, govern the claim of the applicant for bail with even more force. Undoubtedly, the acquisition of 200 odd plots, as alleged, may be a matter for investigation where there are allegations to the effect that those plots are acquired by the applicant by fraudulent means. However, in

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the instant case, before the applicant can be roped in for the offences alleged in the FIR, the necessary nexus between those transactions and the acquisition of the property by the applicant is required to be established. The fact that the transactions between the informant party and Niru Impex were in the year 2006 – 2007 cannot be lost sight of. Therefore, can the applicant be arraigned alongwith co-accused Nos.1 and 3, who allegedly deceived the first informant, for the reason that a number of plots stand in the name of the applicant, would be a matter for adjudication at the trial.

11. The applicant is a woman. She has been in custody since 13th February, 2024. Further detention of the applicant does not seem warranted. The applicant also appears to have roots in society. Possibility of tampering with evidence and fleeing away from justice also appears remote. I am, therefore, persuaded to exercise discretion in favour of the applicant.

12. Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) The applicant be released on bail in CR No.60 of 2023 registered with EOW, Mumbai, (original CR

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No.341/2023 registered with DB Marg Police Station), on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

(iii) The applicant shall mark her presence at EOW, Mumbai, on the first Monday of every alternate month between 11.00 am. to 1.00 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) The applicant shall not leave the country without prior permission of the jurisdictional Magistrate.

(vi) On being released on bail, the applicant shall furnish her contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

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(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]

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