

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 715 OF 2024

Sandeep Shivaji Bhondve	..Applicant
Versus	
The State of Maharashtra	..Respondent

—————

Ms. Mallika Ingale i/b. Shital Tanpure for Applicant.
Smt. M. H. Mhatre, APP for State/Respondent.
Mr. Hirenkumar Babubhai Patel, complainant (in person) present.

—————

**CORAM :- SARANG V. KOTWAL, J.
DATE :- 14 MARCH 2024**

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with the complaint filed by one Hirenkumar Patel on 05.05.2023 with the Senior Inspector of Police, Ravet police station, Pimpri-Chinchwad. As of today, the F.I.R. is not lodged or registered.

2. Learned APP, on instructions, states that the preliminary enquiry before registration of the F.I.R. is going on and it is being conducted by the Economic Offences Wing, Pimpri-Chinchwad.

VINOD
BHASKAR
GOKHALE

Digitally signed by
VINOD BHASKAR
GOKHALE
Date: 2024.03.15
11:40:26 +0530

3. Learned counsel for the applicant submitted that the Hon'ble Supreme Court in the case of *Shri Gurbaksh Singh Sibbia and others Versus State of Punjab*¹, in paragraph 37 has held that, filing of a first information report is not a condition precedent to the exercise of the power under section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed.

Learned counsel for the applicant relying on this observation submitted that this Court can exercise the powers U/s.438 of the Cr.p.c. to grant relief in the nature of anticipatory bail, though, the F.I.R. is not yet registered.

4. Considering the observations of the Hon'ble Supreme Court in the case of *Shri Gurbaksh Singh Sibbia and others (supra)*, I have heard the parties on merits. I have perused that complaint. The complainant is present in the Court in person.

5. The complaint given by Hirenkumar mentions that, he was in the business of construction. He wanted to purchase a land

1 (1980) 2 Supreme Court Cases 565

in Ravet for development. He got acquainted with the applicant during the course of his business. The applicant told him that, he would make a land at survey No.103 available to the complainant. Accordingly, a transaction was entered into for Rs.20 lakhs. However, that particular transaction is not the subject matter of the complaint. It is admitted by the learned APP that the said amount of Rs.20 lakhs is not the subject matter of the complaint.

6. The subject matter of the complaint is that the applicant had made a representation to the complainant that, he had a common land with his brothers Sitaram Bhondve and Sahebrao Bhondve. Out of them, Sahebrao had passed away. The applicant told the complainant that his legal representatives and the co-owners were willing to give their share of land for development. He further told the complainant that to gain the trust of Sitaram, as well as, Sahebrao's legal heirs, they will have to be given some amount from the bank account of the applicant. The applicant was willing to sell his share of land, but for shares of his brothers, he did not have sufficient money to pay. He suggested that the complainant should pay Rs.50 lakhs to the applicant for

that purpose and the applicant was to transfer that amount to Sitaram and the legal heirs of Sahebrao. Accordingly, the complainant paid him Rs.50 lakhs and an MoU was executed. It was notarized on 19.05.2021. The complaint mentions that the complainant transferred Rs.25 lakhs each on 20.05.2021 and 28.05.2021 through N.E.F.T. After that, there was no further progress and in April 2022, the applicant told the complainant that the transaction was cancelled. The complainant met Sitaram and the legal heirs of Sahebrao. They told him that they did not receive any amount and, therefore, they had cancelled the transaction. The complainant realised that his money was misappropriated by the applicant. Therefore, he gave a complaint to the police.

As of today, the F.I.R. based on the complaint is not registered, but preliminary enquiry is going on.

7. In this background, learned counsel for the applicant, on instructions, made a voluntary statement that the applicant is desirous of returning the amount to the complainant. However, the learned counsel for the applicant, on instructions, submitted that

the applicant will return only the amount of Rs.50 lakhs without interest. She submitted that the complainant and the applicant had a discussion and the complainant was agreeable to accept Rs.50 lakhs only. The complainant who is present in the Court disagrees with this submission. Therefore, at this stage, it is difficult to accept the submissions made by the learned counsel for the applicant. As of today, from the complaint, the offence is clearly made out. The complainant has lost Rs.50 lakhs. The applicant has earned illegal benefit to the tune of Rs.50 lakhs. No possible explanation is offered. Therefore, I am not inclined to grant any protection to the applicant.

8. The application is rejected.

(SARANG V. KOTWAL, J.)