IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 993 OF 2024

Mr. Clarence Anthony Pereira ..Applicant
Versus
The State of Maharashtra ..Respondent

Mr. Abhishek Kulkarni a/w. Sagar Wakale for Applicant.
Smt. M. H. Mhatre, APP for State/Respondent.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 15 APRIL 2024

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No.627 of 2023 registered at Andheri Police Station, on 09.12.2023, under Sections 420, 452, 465, 467, 468 and 471 of the Indian Penal Code.

2. Heard Mr. Abhishek Kulkarni, learned counsel for the applicant and Smt. Mhatre, learned APP for the State.

3. The F.I.R. is lodged by one Bharatkumar Patel. He has stated that, he has a family consisting of his two sons, daughters in law and grand children. The informant is a hawker and is earning

his livelihood by selling clothes at Colaba. Since his family had many members, he decided to purchase a flat in the year 2015. Accordingly, he purchased Flat No.502, ‘B’ Wing, 5th floor, Gopeshwar Apartment, Chakala, Andheri (E). The construction was completed and he got the possession in the year 2021. Initially, he gave that flat on rent to one Arora; who vacated it on 05.02.2023. Thereafter, since the informant was in need of money, he decided to give that flat on rent. The person who was looking after the building namely Abbas told this to an Estate Agent Chandrakant Kharat; who brought one Rafel. The first informant and Rafel prepared the leave and licence agreement on 11.02.2023. The rent was fixed at Rs.35000/- per month and the deposit was fixed at Rs.1 lakh. Rafel had paid Rs.50000/- online. The informant was in financial difficulty and, therefore, he decided to sell that flat in March 2023. He had sent a prospective purchaser to have a look at that flat. At that time, the present applicant who is Rafel’s father and the applicant’s daughter Rachel fought with that prospective purchaser and drove him away. The applicant was not allowing anybody to see that flat. They used to tell the prospective purchasers that, they themselves had purchased that flat. When the informant questioned them, they suggested to him that the informant should sell that flat to the applicant and his family. There are allegations that the applicant's family had put some new furniture and had changed the fans. It is alleged that the applicant, Rafel and Rachel told him that they could purchase his flat for Rs.1,44,00,000/-. The informant told them that they should pay some earnest money and should prepare an MoU. On 23.04.2023, the applicant sent a photograph of a cheque issued on the State Bank of India, bearing No.143665 for Rs.10 lakhs through WhatsApp, but he did not handover the cheque to the informant. They did not even pay the rent of that flat.

4. On 10.08.2023, the informant gave a notice to Rafel for vacating that flat, but the flat was not vacated. The applicant prepared a forged MoU and an affidavit. Those documents were notarised. They were using those documents to claim their ownership. On 10.10.2023, when the informant and his daughter in law had gone to the flat to request the applicant to vacate the

flat, they were abused and threatened. The informant gave a complaint to Andheri police station. During enquiry, he came to know that the applicant had filed a Civil Suit in the Court at Dindoshi. On this basis the F.I.R. was lodged.

5. Learned counsel for the applicant submitted that the informant had received Rs.45 lakhs in cash in installments from the applicant and that he had executed a receipt to that effect. A copy of that receipt is at page No.42 of memo of this application. He submitted that, an MoU was executed between the parties on 22.03.2023. It bears the informant's signature. It is a Notarised document and it is accompanied by a possession letter. He submitted that, the leave and licence agreement was executed on 11.02.2023. The informant had filed the proceedings on 19.12.2023 before the competent authority. On the other hand, the applicant has filed a civil suit in the Court at Dindoshi; in January 2024. He, therefore, submitted that it is purely a civil dispute and, therefore, the applicant's custodial interrogation is not necessary.

6. Learned APP strongly opposed these submissions and

produced the investigation papers before the Court. She heavily relied on the statement of the Notary Sayyad Amanulla. He has categorically stated that the informant was not present for notarising that document and the informant had not signed in front of him. She further submitted that the statement of Abbas Ali Razaq and Satish Sharma also support the informant's case. She submitted that the applicant has not only created the forged document, but he actually used it by relying on it before the Court where he had filed a civil suit.

7. Learned APP submitted that, there are four antecedents against the present applicant; as follows:

i) C.R.No.353/2016 registered at Andheri police station, under sections 420 r/w. 34 of the I.P.C.

ii) C.R.No.360/2014 registered at Khar police station, under sections 376, 509, 504 and 506 of the I.P.C.

iii) C.R.No.403/2014 registered at Bandra police station, under section 354-A, 420, 506 r/w. 34 of the I.P.C.

iv) C.R.No.465 of 2014 registered at Bandra police station, under section 376, 328 and 506 of the I.P.C.

8. I have considered these submissions. As rightly submitted by the learned APP, the statement of Notary is incriminating against the present applicant. It is a strong circumstance against the applicant. The Notary Sayyad has stated that, on 22.03.2023 the applicant and his family members had approached this witness in Andheri Court. The applicant had already prepared two documents. He insisted that the Notary should enter those documents in his register and should notarise those documents. Sayyad Amanulla then obtained the applicant's signature and thumb impression on the documents and kept those documents with himself; waiting for the informant to approach him. But till 6:00p.m. the informant never came to him and ultimately he handed over those documents to the applicant. He has categorically admitted that, he had notarized those documents in the absence of the first informant. This statement clearly supports the case of the informant.

9. Another strong circumstance against the present applicant is the photograph of the cheque which was sent on WhatsApp to the informant. This was quite unusual, because if the

transaction was genuine; there was no difficulty in handing over the physical cheque to the informant. But that was not done. This again supports the informant's case.

10. The next circumstance is about the statements given by Abbas Razaq and Satish Sharma who had brought Rafel to the informant. They have also supported the informant's case. The dates are also important. The leave and licence agreement was executed in February 2023 and immediately the purported MoU was executed in March 2023. The informant's case is that the said MoU is forged. Therefore, only because the applicant had approached the Civil Court by filing a civil suit, that by itself will not mean that the offence of forgery is not made out. The evidentiary value of the notarized document is another issue; as far as, the civil suit is concerned. At this stage, there is reasonable and definite material against the present applicant showing his involvement in creating the forged document and actually using it. The informant is a hawker and he is in need of money. From the allegations it appears that he has lost his flat and has suffered financial loss. The investigation requires custodial interrogation of

the applicant.

11. The antecedents against the applicant is also an important issue which the Court will have to take into consideration while deciding this application; as there are four serious offences registered against the present applicant. Therefore, considering all these aspects, the applicant cannot be protected U/s.438 of the Cr.p.c.

12. The application is rejected.

(SARANG V. KOTWAL, J.)