IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1532 OF 2021

Vallabhji Moorji Dhedia .... Applicant
Versus
The State of Maharashtra & another .... Respondents

Ms. Racheeta Dhuru, Advocate i/b. Avinash B. Avhad for the Applicant.
Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.
Mr. Dilip Shukla, Advocate for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 29th FEBRUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.204/2019 registered at Bhayandar Police Station on 9.7.2019 under sections 420, 465, 467, 468, 471 of IPC.

2. Heard Ms. Racheeta Dhuru, learned counsel for the Applicant, Ms. Mahalakshmi Ganapathy, learned APP for the Respondent-State and Mr. Dilip Shukla, learned counsel for the Respondent No.2.

3. The informant has stated that he along with his brother Ratilal were having the business of building construction and they had a shop at Bhayandar. The informant, his brother Ratilal and the present Applicant were conducting the construction business in the year 1995. In the year 1996, there was a dispute between the brothers on the one hand and the Applicant on the other hand. One Arunbhai Kadam mediated between them. The informant entrusted his business with his brother Ratilal and went to Ahmedabad and started his own business. In the meantime, he used to come to Mumbai and used to look after his brother Ratilal's business. As Arun Kadam had mediated, the Applicant gave 25 Ares land at Survey No.122 at Bhayandar to Ratilal and gave 46 Ares out of 93 Ares at new Survey No.168 at Bhayandar to the informant. On 15.3.1998, the Applicant had executed an agreement for development-cum-sale, power of attorney, declaration-cum-indemnity and possession letter. The documents were executed on a stamp paper. The informant's brother Ratilal raised construction on the land which came to

his share from the Applicant. The informant on the other hand had kept the land vacant. In the year 2005, the informant requested the Applicant to register the land in the informant's name. But, the Applicant was avoiding to do it. Therefore, the informant met the original owner of the land Firoz Irani in the year 2005 because he had sold that piece of land, to the Applicant, which had come to the share of the informant. The land still stood in the name of Firoz Irani. Said Irani assured the informant of taking a decision regarding the same.

4. In August, 2018, the informant came across an advertisement mentioning that some third party was to develop the same piece of land. The informant's brother met Firoz Irani and inquired about it, who in turn told the informant's brother that he was not aware of the transaction between the Applicant and the informant. Thereafter there was some correspondence between the parties. However, the land was not transferred in the name of the informant. The informant filed Regular Civil Suit No.108/2019 in the Civil Court at Thane. In that Civil Suit, the Applicant had filed

certain documents which included copy of the sale-deed dated 19.6.1995 and the deed of cancellation between the same parties dated 29.6.1995. There was another development agreement between Irani and the Applicant dated 19.6.1995. According to the first informant, all these documents were doubtful and some of the documents were backdated.

5. The informant has further mentioned that the Applicant had taken Rs.60 Lakhs in cash and had given that land for sale and development to the informant, but, the informant could not develop that land because the land was never transferred in his name. On these allegations, the FIR is lodged.

6. Learned counsel for the Applicant submitted that the Applicant has not committed any offence. The grievance of the informant is in the nature of civil dispute for which the informant has already initiated civil proceedings before the competent Civil Court. She submitted that after interim application for injunction made by the informant was rejected, this FIR is lodged only to pressurize the Applicant. The

transaction is old and after about twenty years, the FIR is lodged. At this belated stage, the Applicant's custodial interrogation is not warranted. Entire case is based on documentary evidence. The Applicant has provided all the documents to the investigating agency. The informant has since passed away and, therefore, the custodial interrogation will not be useful as the informant is no more and, therefore, the Applicant's case cannot be verified through custodial interrogation.

7. Learned APP submitted that the Applicant has not furnished the original copies of this transaction. She submitted that the Applicant be directed to cooperate with the investigation. She relied on the allegations in the FIR. According to her, some of the documents recovered during the investigation indicate that some of the signatures could be forged. She, therefore, submitted that the custodial interrogation of the Applicant is necessary.

8. Learned counsel for the wife of the first informant submitted that the informant has passed away and his wife has

stepped into his shoes to contest the civil suit filed by the informant. He submitted that the informant was cheated to a large sum of Rs.60 Lakhs. He has not got his land and, therefore, the offence is serious. For verification of the documents and for taking custody of the original documents the Applicant's custodial interrogation is necessary. The complaint was made one year prior to the FIR but since inquiry was going on it took one year for registration of the FIR.

9. I have considered these submissions. From the above discussion, it is quite clear that the matter pertains to the documentary evidence. Significantly the entire allegations are pertaining to the documents purportedly executed in the year 1998 between the Applicant and the informant The original agreements between the original owner Irani and the Applicant was from the year 1995. The informant had met said Irani in the year 2005 and thereafter further transaction and further inquiry was made in the year 2018 when the informant

came across the notice issued in a newspaper regarding development of the same property.

10. All these years the informant had not taken any steps to safeguard his interest or to get the land registered in his name. Therefore, for about twenty years the informant had not taken any positive steps to safeguard his interest if the Applicant had not transferred the land in his name having accepted the amount of Rs.60 Lakhs in the year 1998 itself. This is rather unusual.

11. However, I am not deciding the Civil rights of the parties and, therefore, at this stage it is not possible to record any further finding regarding whether said amount was actually paid or not.

12. I am more concerned about the delay caused by the first informant in making the grievance about the same transaction. As far as the civil rights of the parties are concerned, as mentioned earlier, a Civil Suit is already pending

between the parties. It will take its own course. Ultimately their civil rights can be decided in that civil suit.

13. Today I am only considering the necessity of custodial interrogation of the Applicant. In that context, it must be noted that the informant has passed away. Therefore, the custodial interrogation of the Applicant will not facilitate the investigating agency to confront the Applicant with the original story of the first informant. At the highest the investigation can only be in respect of the documents.

14. Most of the documents are already in the custody of the investigating agency. Whatever documents are important, they could be produced by the informant's wife. The Applicant was on interim protection in this application since 5.7.2021. There are no allegations that the Applicant had misused that interim protection. The Applicant can still be directed to cooperate with the investigating agency if they want his presence for investigation purposes.

15. In this view of the matter, the Applicant can be protected under Section 438 of Cr.P.C. with directions to him to cooperate with the investigation. It is made clear that this order will not come in the way of either of the parties to establish their respective civil rights. This order is passed only for the purpose of deciding the question of protection under section 438 of Cr.P.C. Hence, the following order :

ORDER

(i) In the event of his arrest in connection with C.R.No.204/2019 registered at Bhayandar Police Station, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

(ii) The Applicant shall attend the concerned police station as and when called and shall cooperate with the investigation.

(iii) Anticipatory Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)