IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3155 OF 2023

1. Govardhan Govindbhai Vanani
2. Amit Govardhan Vanani ...Applicants

vs.

The State of Maharashtra and Another ...Respondents

Mr. Aabad Ponda, Senior Advocate a/w. Mr. Kiran Varma, Ms. Sharila D'Souza i/b. Flavia Legal, for the Applicants.
Mrs. G.P. Mulekar, APP, for the Respondent/State.
Mr. Rajiv Patil i/b. Mr. Saurabh Ghag, for Respondent No. 2.
Mr. Ravindra Avhad, PI, EOW, Unit-5.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 06, 2024

P.C.:

1. This application is preferred seeking pre-arrest bail in connection with C.R. No. 60 of 2023 registered with EOW, Mumbai (original C.R. No. 341 of 2023) registered with D.B.Marg police station for the offences punishable under sections 120-B, 420, 465, 467, 468 and 471 of Indian penal Code, 1860.

2. The gravamen of indictment against the applicants is that the applicants are the partners of Neru Impex. The applicants were dealing in the business of diamonds with M/s. Samir James N.V. (M/s. Samir) and Ace Diamonds Limited, the entities of Mr. Samir Bhansali-the brother of Sanjay Bhansali, the first informant. Mr.

Samir Bhansali is a Belgium national and non-resident Indian. During the period September, 2006 to June, 2007, the applicants had allegedly purchased diamonds worth Rs. 41,73,04,051/- from M/s. Samir and Ace Diamond Limited by making a representation that they would pay the price of those diamonds within 120 days.

3. The first informant alleged that the applicants initially represented that since all their bank accounts were frozen, they were not in a position to pay the price of the diamonds and thus they would convey a property bearing survey No. 18, Dobligram, Surat admeasuring 19936 sq. mtrs. A power of attorney was executed in the name Mr. Devang Bhansali, another brother of the first informant. Likewise, power of attorney in respect of the lands bearing survey Nos. 91, 82/4, 82/1/3 village Kathargram, Surat admeasuring 13777 sq. mtrs. which stood in the name of Bharatbhai Miyani, the maternal cousin of the applicant Goverdhan Vanani, were executed in favour of Devang Bhansali. However, despite repeated demands those power of attorneys were not registered.

4. Upon being pursued by the first informant, Govardhan professed to transfer the land bearing No.91/3 situated at

Katargam, Surat which stood in the name of Amrutaben, the wife of applicant Govardhan. Left with no option, the first informant agreed to take conveyance of the said property in the name of his business associate Savjibhai Patel. The said property was, however, registered under a Conveyance Deed dated 26th November, 2009.

5. Subsequently, the applicants offered to settle the dispute. However, the applicants coerced the first informant party to re-convey the land bearing survey No. 91/3. The applicants did not honour their promise. Eventually, upon being apprised that the applicants were alienating their lands situated at Survey No. 1376, Pardi Goan, Parnera, Valsad admeasuring 14756.68 sq. mtr., comprising 60 plots, the first informant party purchased the said land in the name of the company of the first informant. In the month of November, 2018, when the first informant and his brother Samir called upon the applicants to pay the outstanding amounts, the applicants flatly declined to transfer any property. Thereupon, the first informant and Samir realized that they were defrauded. Articulating the various acts of deception and fraudulent transactions, the first informant lodged report on 21st October, 2023.

6. Apprehending arrest, the applicants approached the Court of Session. By an order dated 2nd November, 2023 the learned Additional Session Judge declined to exercise the discretion in favour of the applicants. However, Amrutaben, the wife of accused No. 1 was granted pre-arrest bail.

7. The first informant came to be impleaded as party respondent No. 2. An affidavit in reply is filed on behalf of respondent No. 2.

8. I have perused the averments in the application, documents on record and contentions in the affidavit in reply and report filed by the investigating officer.

9. I have heard Mr. Aabad Ponda, learned senior advocate for the applicants, Mrs. G.P. Mulekar, learned APP, and Mr. Rajiv Patil, learned counsel for respondent No. 2.

10. Mr. Ponda, learned senior counsel for the applicants submitted that there were regular transactions between the applicants and the informant party. The applicants had admittedly paid the price of the diamonds sold and delivered during the period 1995 to 2007. The transactions in question were during the period

September, 2006 to June, 2007 aggregating to USD 50,27,759.64 equivalent to Rs. 22 Crores.

11. The first informant has inflated the value of the goods to Rs. 41,73,04,051/- by applying the conversion rate of Rs. 83/- per USD as of the date of the first information report. The entire amount of about Rs.22 Crores had been repaid to the informant, party by executing documents. Yet, after more than 15 years, the FIR came to be lodged with trumped up allegations.

12. Mr. Ponda submitted that the earlier endeavour of the informant party to give the dispute a colour of prosecution was negatived by the EOW. Attention of the Court was invited to a communication dated 15th February, 2021 whereby Samir Bhansali was informed that an inquiry conducted by EOW in the complaint of Samir Bhansali did not reveal commission of any cognizable offence and thus the inquiry was closed. Mr. Ponda submitted that on the self allegations, the applicants are sought to be falsely roped in.

13. In any event, according to Mr. Ponda, there is no element of cheating. Nor the offence of forgery and use of forged documents as genuine can be said to have been prima facie made out. Therefore,

in such a case gross delay of more than 15 years, the liberty of the applicant deserves to be protected.

14. Mrs. Mulekar, learned APP resisted the prayer for pre-arrest bail. It was submitted that the investigation has revealed that the applicants had availed loan from various banks and financial institutions and with a view to save their immovable properties from attachment, the applicants had surreptitiously transferred those properties in favour of their near relatives, associates and subsequently all those properties were again transferred in the name of Asha Vanani- the wife of Amit Vanani, who has been arrested. The custodial interrogation of the applicants is warranted to facilitate the investigation into fraud of huge magnitude perpetrated by the applicants.

15. Mr. Rajiv Patil, the learned senior counsel for respondent No. 2 submitted that the aspect of delay in lodging the FIR is required to be appreciated in the light of the repeated promises made by the applicants. The informant party was deceived to believe those false representations. The properties which the applicants had offered to convey, in lieu of the price of the diamonds, did not belong to the applicants. Mr. Patil laid emphasis on the fact that the non-payment

of the price of the diamonds worth USD 50,27,759.64 is incontrovertible. The injury to the informant party is writ large. Therefore, at this stage, where the investigation is at nascent stage, the custodial interrogation of the applicants is indispensable.

16. Placing reliance on the decision of the Supreme Court in the case of **Pratibha Manchanda and Anr. vs. State of Haryana and Anr.**[1], wherein the Supreme Court enunciated that the pendency of the civil proceeding does not stop issues of forgery and fabrication being considered in the course of criminal investigation, it was submitted that the applicants can not be heard to urge that informant party ought to have resorted to civil remedies.

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

1 Cri.Appeal No. 1793/2023 Dt.07/07/2023.

under the invoices raised during the said period aggregating USD 50,27,759.64 was not paid.

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 from0 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.**[2] 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 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.

2 Cr. Appeal out of SLP (Cr.) No. 13485/23

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 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.

27. It is, however, clarified that if the arrest of the applicants is necessitated to facilitate investigation in the commission of the alleged offences which have no co-relation with the FIR in question, this order cannot be construed as a blanket protection from arrest. With the aforesaid clarification, I am inclined to allow the application.

Hence, the following order.

ORDER

1] In the event of arrest in C.R. No. 60 of 2023 registered with EOW, Mumbai, the applicants be released on bail on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount, each.

2] The applicants shall cooperate with the investigation and attend EOW, Mumbai on 18th to 21st March, 2024 in between 10 am to 1 pm and, thereafter, as and when directed.

3] The applicants shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

4] The applicants shall regularly attend the proceedings before the jurisdictional Court.

5] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)