

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2215 OF 2024

Malik Mansoor Jiwani ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. Vahid Shaikh a/w. Mr. S. M. M. Owais T. Jahagirdar and Mr. Abdul Wahab for Applicant.

Mr. Balraj B. Kulkarni, APP for Respondent-State.

Mr. Ankur Shelar, PSI, Panvel City Police Station.

CORAM : MANISH PITALE, J.

DATE : AUGUST 26, 2024

P.C. :

. Heard Mr. Shaikh, learned counsel for the applicant and Mr.Kulkarni, learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No.0185 of 2024 dated 23.03.2024 registered with Panvel City Police Station, District - Navi Mumbai, for offences under Sections 406, 420, 441, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. The informant approached the police, claiming that co-accused persons, who are office bearers of a society, and the applicant conspired and submitted forged map before the Panvel Municipal Corporation in the context of construction of flats on a particular property, of which the deceased father of the informant was the developer. It is alleged that such activities were undertaken after the death of the father of the informant on 26.12.2018. Specific allegation has also been made against the applicant in the context of a particular flat in the said construction

and it is alleged that amount of Rs.14 lakhs was due from the applicant and yet, the applicant in connivance with the co-accused persons took possession of the flat and placed his lock on the same. In this manner, according to the informant, the applicant along with co-accused persons committed the said offences.

4. The learned counsel for the applicant submits that even if the statement of the informant is taken into consideration, the allegation regarding forgery is not relatable to the applicant. It is submitted that the correct facts are that, after the death of the father of the informant, when the project of construction was still incomplete, none of the legal heirs, including the informant, came forward to take responsibility of completing the project. In that connection, the original owners of the property formed the society and issued a public notice. Thereupon, they took it upon themselves to develop the property. In that context, they issued notices to the applicant to deposit the balance amount in respect of the flat booked by the applicant. Such payments were made and consequent thereto, the applicant took possession of the flat and put his lock thereon. In such circumstances, it is submitted that ingredients of the offence are not made out.

5. On the other hand, the learned APP submits that the serious offence regarding forgery under Section 467 of the IPC is registered against the accused persons, including the applicant. It is submitted that the contentions raised on behalf of the applicant are more in the nature of his defence and at this stage, so long as the ingredients of the offence are made out on the basis of the statement of the informant, the present application ought not to be entertained.

6. This Court has heard the learned counsel for the applicant and the learned APP in the backdrop of the material placed on record. This Court is inclined to allow the application for the following reasons:-

- a. The specific allegation pertaining to forged map being submitted in the office of the said municipal corporation, even according to the statement of the informant, is *prima facie* relatable to the co-accused persons being office bearers of the society. Such allegation *prima facie* cannot be said to be related to the overt act attributed to the applicant;
- b. The overt act attributed to the applicant is his failure to pay balance amount of Rs.14 lakhs concerning a flat in the project, while conceding that he had indeed paid Rs.6 lakhs to the father of the informant. The allegation is that despite balance amount being due, the applicant took possession of the flat;
- c. A perusal of the documents filed along with the application shows that the society formed by the original owners of the property issued specific legal notices to the applicant, demanding the balance amount due in respect of the flat and pursuant thereto, the applicant made such payments by way of cheques. Proof of such cheques having been honoured is placed on record by the applicant. This is a factor that needs to be taken into consideration in favour of the applicant;
- d. The applicant has placed on record a copy of the public notice issued in the month of June 2019 by the original owners, who had formed the society in respect of completion of the said project after the death of the father of the informant. This *prima facie* supports the contention raised on behalf of the applicant that after the death of the father of the informant, none of his heirs came forward to take proper steps in respect of the project and in that light, the aforesaid public notice was issued and the project was sought to be

taken forward;

- e. The legal notices issued on behalf of the society were dated 26.05.2022 and 01.12.2022 i.e. after the aforesaid public notice was issued by the society. The applicant responded to the said notices and demonstrated his *bona fide* by making payments towards balance amount for the said flat. In such a situation, the applicant having put his lock on the said flat *prima facie* indicates that the ingredients of the offences alleged against the accused persons cannot be said to be made out at least insofar as the applicant is concerned;
- f. In any case, the applicant is ready to co-operate with the investigation.

7. In view of the above, the application is allowed in the following terms:-

- A. In the event the applicant is arrested in connection with FIR No.0185 of 2024 dated 23.03.2024 registered with Panvel City Police Station, District - Navi Mumbai, he shall be released on bail on furnishing PR Bond of Rs.25,000/- [Rupees Twenty Five Thousand only] with one or two sureties in the like amount;
- B. The applicant shall remain present before the investigating officer between 10:00 a.m. and 12 noon on 29.08.2024 and thereafter as and when required by the investigating officer. He shall co-operate with the investigation;
- C. The applicant shall not contact the informant in any manner during the pendency of the investigation;
- D. The applicant shall not influence the informant, witness or any person concerned with the case and he shall not tamper

with the evidence.

8. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

9. The application is disposed of.

(MANISH PITALE, J.)

Minal Parab