IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2764 OF 2024

Avinash Vaman Thorat …...Applicant

VERSUS

State of Maharashtra …...Respondent

Ms. Tanaya Goswami, for Applicant.

Ms R.V. Newton, APP for Respondent-State.

CORAM : MANISH PITALE, J.

DATE : OCTOBER 14, 2024

P.C. :

1. Heard, learned Counsel for the Applicant and learned APP for the State.

2. The Applicant is apprehending arrest in connection with First Information Report No. 0204 of 2024 dated 26th August 2024 registered at Gangapur police Station, District Nashik for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

3. The Statement of the informant leading to registration of the FIR shows that according to him the accused person including the Applicant had given assurances and induced the informant into purchasing a piece of land as investment. The total consideration was agreed at Rs. 2,60,00,000/-. According to the informant he had paid substantial amount of Rs.2,14,70,000/- to the co-accused, who is related to the Applicant. There is allegation that the aforesaid payments were made, inter alia, on the assurances given by the Applicant.

4. Eventually, when the co-accused persons were not coming forward to finalize the transaction and to execute the registered document, on 23rd May 2021, the informant issued a notice to the co-accused person for refund of the amount along with interest at the rate of 5%.

5. It is specifically alleged in the statement of the informant that, at this stage, the Applicant came forward and again assured the informant that the transaction would go through, but only after the entire amount was deposited on the insistence of the co-accused person. The Applicant allegedly told the informant to deposit the remaining amount in his account. The Informant has stated that the amount of Rs.29,65,000/- was deposited with the applicant on various dates. Yet, the transaction never came through and in the meanwhile the land was sold to a third party. Hence, the FIR was registered.

6. The learned counsel for the applicant submits that the informant is seeking to give colour of criminality to a pure civil dispute. He brought to the notice of this Court that the informant and his wife had already filed a civil suit before the Competent Court at Nashik, wherein the co-accused person and the Applicant have been shown as Defendants. It is submitted that the pleadings in the said Suit clearly show that the grievance of the informant, if at all, is against co-accused person and the Applicant has been unnecessarily roped in as an accused in the subject FIR. It is further asserted that the amount of Rs.29,65,000/- (recorded in the order of the Sessions Court Rs.33,65,000/-) pertains to an independent transaction that the Applicant had with the informant. It is further stated that if time of two months is granted, the Applicant would deposit said amount of Rs.33,65,000/-. On this basis, the Applicant seeks relief of anticipatory bail.

7. On the other hand the learned APP submits that the statement of the informant leading to registration of the FIR records in detail the role of both the accused persons. There are specific allegations made against the Applicant to indicate that he indulged in overt acts of dishonestly inducing the informant to part with substantial amounts of money.

8. Since the ingredients of the offence punishable under Section 420 of the IPC are clearly made out, it is submitted that the Application ought to be dismissed.

9. This Court has considered the rival submissions carefully. The fact that a Civil Suit is filed by the informant and his wife before the Competent Court at Nashik, at first blush, tends to give an impression that the dispute between the parties is essentially civil in nature. But, a closer look at the Plaint concerned with the said Suit would indicate that the informant has referred to two transactions and eventually in the Suit, the informant is seeking refund of a specific amount of Rs.27,20,000/- from the Defendants, apart from seeking specific direction in respect of a registered agreement.

10. But, a perusal of the statement leading to the registration of FIR shows that the grievance pertains to a specific transaction concerning substantial amounts paid by the informant for purchasing a particular piece of land. It is alleged that the accused persons, including the Applicant herein, convinced the informant that investing into the aforesaid land would be a good decision. In that light, the informant agreed for purchasing the said piece of land for Rs.2,60,00,000/-. Although the statement does record that substantial amount of Rs.2,14,70,000/- was paid to the co-accused person, at every stage there are allegations against the Applicant as to the manner in which he was party to the design of inducing the informant into parting with such huge amounts of money.

11. There is a specific allegation that after the informant had issued notice to the co-accused person to refund amount of Rs.2,14,70,000/- with interest, the Applicant came forward and stated that the co-accused would complete the transaction and execute the necessary document only after entire balance amount was paid and in that light, the Applicant received amount of Rs.29,65,000/- on various dated in his bank account. It is alleged that despite the aforesaid amounts being transferred totalling to Rs.2,44,35,000/-, the accused persons did not take any steps for the execution of the documents and instead on 20th April 2021, the very same piece of land was sold to a third party. It is significant to note that specific amounts were transferred into the accounts of the Applicant after the land was already sold to a third party on 20th April 2021.

12. The aforesaid material, in the light of specific allegations made by the informant, do make out a *prima facie* case against the Applicant, as regards dishonest inducement for the informant to part with large sums of money. Merely because substantial part of the amounts were transferred in the accounts of the co-accused person cannot come to the aid of the Applicant.

13. Additionally, it is to be noted that before the Sessions Court a stand was taken that amount of Rs. 29,65,000/- (recorded by the Sessions Court at Rs.33,65,000/-) pertained to an independent transaction between the Applicant and the informant. The Applicant was unable to make good the said contention before the Sessions Court. Even before this Court there is no such statement made in the Application. Yet, oral arguments were made before this Court in that regard, without any material to substantiate the same.

14. Even as regards the proposal to refund the amount of Rs.33,65,000/- as recorded by the Sessions Court, it was stated that if time period of two months is granted, the Applicant would be able to deposit the said amount. This Court is of the opinion that since ingredients of the offence under Section 420 of the IPC, are *prima facie* made out against the Applicant, the aforesaid proposal can be of no avail. In any case, there is nothing to indicate any independent transaction between the Applicant and the informant. No case is made out for granting Anticipatory Bail.

15. The Application is dismissed.

(MANISH PITALE, J.)

Arun Sankpal