

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2844 OF 2024

1. Thengumathrayil Philipose Alexander.
2. Thengumthrayil Robin Alexander. ...Applicants.

Versus

The State of Maharashtra ...Respondent

Mr. Ashutosh Srivastava, for Applicant(Through V.C.).

Mr. Kiran C. Shinde, APP for Respondent-State.

CORAM: MANISH PITALE, J

DATED: 22nd OCTOBER 2024

PC:-

1. Heard the learned Counsel for the Applicants and the learned APP for the Respondent-State.

2. The Applicants are apprehending arrest in connection with

FIR No. 0586 of 2022 dated 9.8.2022 registered at Police Station, Nigdi, District-Pimpri-Chinchwad, for the offences under section 406, 420, read with section 34 of the Indian Penal Code.

3. At the outset, this Court put a query to the learned Counsel for the Applicants as to why the present anticipatory bail application was being moved after more than two years of registration of the FIR. The learned Counsel for the Applicants submitted that the applicants were not aware about registration of the FIR against them and as soon as they became aware about the same, they moved the Sessions Court in the year 2023 for anticipatory bail. But, their application was dismissed by an order dated 6.11.2023. It is submitted that the Investigating Authority did not send any notice or summons to the applicants and in this backdrop, since they are apprehending arrest, they are constrained to move this Court.

4. It is further submitted that the Applicant No. 1 is a senior citizen aged about 86 years and he is suffering from age related health problems while the applicant No. 2 is his son who is aged about 51 years.

5. The statement leading to registration of the FIR shows that according to the informant, his father was induced to invest an amount of Rs. 15,75,000/- with the applicants in the backdrop of the father of the informant being a friend of the applicant No. 1. This was in the context of the land located in Shirur Tehsil. It is alleged that applicants told the father of the informant that after five years of the investment, five acres of land or double the amount will be given to the father of the informant. Reference is made to the payment through cheques as well as cash totalling to Rs. 15,75,000/-. It is then alleged that subsequently the applicants had issued certain cheques to the father of the informant as security, claiming that the cash amount would be paid. The cheques were not encashed on the assurances given by the applicants, but the cash amounts as promised were also not paid. Eventually, on 11.8.2020 the informant's father expired and thereafter, on 9.8.2022, the informant lodged FIR with the police station.

6. Learned Counsel for the applicants submits that the FIR is nothing but an attempt to give colour of criminality to a dispute that at

worst could be said to be a civil dispute. It is submitted that due to the relations between the applicant No. 1 and the father of the informant, they had various dealings about which the informant is not aware. Attention of this Court is invited to document at Exh. D, which shows that the father of the informant had agreed to purchase a particular piece of land from the applicants. He had paid an amount of Rs. 8.75 Lakhs and he was required to pay the remaining amount within two months for completing the transaction. It is claimed that the balance amount is not paid and therefore, the allegation levelled by the informant cannot be used to initiate criminal proceedings against the applicants. It is submitted that in any case, the applicants are ready to cooperate with the investigation and therefore, this Court may consider granting relief.

7. On the other hand, learned APP submits that specific statement is made as regards the amount of Rs. 15,75,000/- being paid by the father of the informant to the applicants on an inducement to return double the money in five years or to hand over five acres of land. As per the allegation, the applicants did not fulfill the promise, thereby

indicating the ingredients of the offence registered against the applicants. On this basis, it is submitted that the applicants do not deserve any indulgence.

8 This Court has perused the material on record in the light of the rival submissions. The application deserves to be allowed for the following reasons :

(a) *Prima facie*, the FIR appears to be delayed for the reason that the informant approached the police on 9.8.2022, despite claiming to be aware about the manner in which his father was cheated by the applicants. The statement of the informant narrate the events chronologically, which indicate that the alleged promise made by the applicants was breached years ago and the informant was aware about the same.

(b) The father of the informant during his life time did not choose to trigger the criminal process, despite the fact that the alleged inducement was made as far back in the year 2008.

(c) The father of the informant expired on 11.8.2020 and thereafter, it took the informant about two years to approach the police

to raise the aforesaid grievance. In this backdrop when the document at Exh. D is perused, *prima facie* it appears to be an agreement executed between the father of the informant and the applicants for purchase a particular piece of land. The said document records that the father of the informant had agreed to pay the balance amount within two months. This *prima facie* indicates that the father of the informant could have initiated appropriate proceedings for specific performance of the said document/agreement. But there is nothing to show that any such steps were taken.

(d) In the light of the said material, there is substance in the contention raised on behalf of the applicants that a probable civil dispute is being given the colour of criminality.

(e) The applicants have undertaken to cooperate with the investigation.

9. In view of the aforesaid reasons, the application deserves to be allowed. Since the applicant No. 1 is a senior citizen aged about 86 years, this Court is inclined to exempt his appearance before the investigating officer.

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

- (A) In the event the applicants are arrested, they shall be released on bail, in connection with FIR Nos.0586 of 2022, dated 9.08.2022, registered at Police Station Nigdi, Pimpri Chinchwad, on furnishing PR Bonds of ₹ 25,000/- each, with one or two sureties each in the like amount, to the satisfaction of the Trial Court.
- (B) The applicant No. 2 shall remain present before the Investigating Officer in connection with the said FIR, on 25th October, 2024, between 10:00 a.m. and 12:00 noon and thereafter as and when called by the Investigating Officer.
- (C) The applicants shall cooperate with the investigation and they shall give details of their permanent address to the Investigating Officer.
- (D) The applicants shall not tamper with the evidence in

any manner. They shall not influence the informant, witnesses or any other persons concerned with the case.

11. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of anticipatory bail.

12. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicants in the present application and that the Trial Court shall proceed further, without being influenced by the observations made in this order.

13. The application is disposed of.

(MANISH PITALE,J.)

ARUNA
SANDEEP
TALWALKAR

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