IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 174 OF 2024

1. Jay Chandraprakash Shukla
2. Chandraprakash Shukla ..Applicants

Versus

The State of Maharashtra ..Respondent

WITH
INTERIM APPLICATION NO. 380 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO. 174 OF 2024

Ms. Neha Patil i/b. Omkar Patil for Applicants.
Mr. Vinit A. Kulkarni, APP for State/Respondent.
Mr. Tarun Sharma (Appeared through V.C.) a/w. Hansraj Solanki for complainant.

CORAM : SARANG V. KOTWAL, J.
DATE : 8 AUGUST 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.652 of 2023 registered at Kashimira Police Station, Mira-Bhayandar, on 17.09.2023, under sections 406, 420, 465, 467, 468 and 471 r/w. 34 of the Indian Penal Code.

2. Heard Ms. Neha Patil, learned counsel for the

applicants, Mr. Vinit Kulkarni, learned APP for the State and Mr. Tarun Sharma, learned counsel for the Intervenor.

3. The F.I.R. is lodged by one Mustali Ibrahim Sidhpurwala. He has stated that, he was having a construction firm by the name M/s. Raj Builders and Developers. It was a partnership firm. He had purchased Survey Nos.20/7 and 20/5 at Ghodbunder. The first informant got acquainted with the present applicants through one Lokesh Pande. The applicants represented to the first informant that they would get the customers for his project. The informant told the applicants to deposit Rs.2,25,00,000/- as a security deposit. The applicants paid Rs.2,16,00,000/- to the informant as a security deposit. A sole selling agreement was executed between the parties. There are allegations in the F.I.R. that, subsequently, a dispute arose between the parties. On one occasion, the applicant No.1 entered in the informant's land unauthorisedly and broke the cabin; for which a separate C.R.No.772 of 2019 was registered at Kashimira police station under sections 447, 143, 146, 149, 427, 504 and 506 of the I.P.C. The informant and his partner decided to sale survey

No.20/5 and 20/7 at Ghodbunder to one Sanjay Surve through his construction company namely ‘Seven Eleven Construction Company’. The land was to be sold for Rs.10 crores. Sanjay paid Rs.1 crore to the informant. In the meantime, the Applicant No.1 Jay Shukla lodged an F.I.R. at Kashimira police station vide the C.R.No.529 of 2021, under sections 420, 406, 409, 120B r/w. 34 of the I.P.C. Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 were also added. In connection with that F.I.R. the informant and his son were granted anticipatory bail. They had deposited the amount of Rs.5 crores in this Court in that connection.

4. On 10.06.2021, the applicants filed R.C.S.No.400 of 2021 before the Civil Judge, Senior Division, Thane against M/s. Raj Builders and Developers i.e. the informant’s firm, for injunction. While filing the suit, no possession letter was annexed with the list of documents. Subsequently, on 28.09.2021, a copy of the possession letter purportedly dated 24.06.2019 was submitted in the Court. There are further allegations that the applicants had taken some amount from one Narayan Lal Choudhary and

Mankaram Devashi, but those amounts were not deposited with the informant's firm. It is the informant's case that, he had not given possession of his land to the applicants. They had forged the possession letter and submitted it in the Court. On this basis the F.I.R. was lodged.

5. Learned counsel for the applicants submitted that the Applicant No.1 himself had lodged the C.R.No.529 of 2021 at Kashimira police station, as mentioned earlier. Thereafter, the applicants have taken steps to file R.C.S.No.400 of 2021 before the C.J.S.D., Thane, for injunction against the informant's firm. According to the learned counsel, the possession letter is a genuine document. The original possession letter is submitted by the applicants before the investigating agency, which is seized by them under a panchanama dated 27.12.2023. She further submitted that the possession letter was submitted during the court proceedings, but the occasion to rely on that possession letter is yet to arise. The Civil Court has decided the Exhibit-5 application. Initially, status-quo was granted, but it was subsequently vacated on 07.10.2021. She submitted that, an Appeal is preferred against

that order. She submitted that, a copy of the possession letter was submitted before the Civil Court after the status-quo order was granted and, thus, the order of status-quo was not based on the possession letter. In any case, subsequently that order was vacated.

6. Learned counsel for the applicants further submitted that, huge amount of Rs.2,16,00,000/- is actually deposited by the applicants with the informant. They have not received back their amount. Therefore, it cannot be said that the applicants have caused any wrongful loss to the informant. On the other hand, the applicants themselves have suffered loss of the amount which they have deposited and further loss which is in respect of the property which they could have sold to various customers as a sole selling agent. Therefore, there is no force in the allegations made in the F.I.R.

7. Learned counsel for the Intervenor submitted that the informant is cheated with the use of that possession letter because it was tendered in the Civil Court. He submitted that the offences under sections 467 and 468 of the I.P.C. are made out. He

submitted that the applicants had not brought the customers as promised by them and, therefore, the informant has suffered monetary loss. He submitted that the applicants have accepted cash from the various customers and, therefore, they may not be protected.

8. Learned APP supported these submissions of the Intervenor. However, he admitted that the applicants have deposited the original possession letter under a panchanama with the investigating agency and they are in the process of verifying the genuineness of the possession letter. There are three other antecedents against the applicant No.1. He produced the statements of Mukesh Game and Solanki. These two statements show that one unknown person had approached Mukesh Game for making a rubber stamp in the name of M/s. Raj Builders and Developers. The said rubber stamp was made by one Sikandar Solanki. Learned APP, therefore, submitted that, there was clear evidence to show that the forged rubber stamps were prepared. Apart from that, there is a CDR showing regular contact between Mukesh Game and the applicant No.1.

9. I have considered these submissions. A copy of the possession letter was actually used in the court proceedings as it was tendered in the Court proceedings. Though, status-quo order was passed before that, but the use of that document is clear because it was actually tendered in the Court. Whether it is a genuine document or a forged document can be seen in the light of the statements of Mukesh Game and Solanki, as referred to herein above. There is a CDR showing telephonic conversation between Mukesh Game and the applicant No.1. Therefore, role of the applicant No.1 is sufficiently shown from the investigation carried out so far.

10. In this background, when I expressed my disinclination to grant relief to the applicant No.1, the learned counsel for the applicants prays for withdrawal of this application, as far as, the applicant No.1 is concerned. She pressed this application for the applicant No.2. In this background, from the discussion herein above, it can be seen that the main allegations are against the Applicant No.1. The Applicant No.2 has not played any major role in approaching Mukesh Game and Solanki to create a forged

rubber stamp. The F.I.R. itself mentions that the amount of Rs.2,16,00,000/- was paid to the informant, which is not returned. In this background, the applicant No.2 can be protected by an order U/s.438 of the Cr.p.c. His custodial interrogation is not necessary, particularly, in the wake of weak allegations against him and considering the fact that he is 72 years of age.

11. Hence, the following order :

O R D E R

i) The application on behalf of the Applicant No.1 Jay Chandraprakash Shukla is dismissed as not pressed.

ii) In the event of arrest of the Applicant No.2 Chandraprakash Shukla in connection with C.R.No.652 of 2023 registered at Kashimira Police Station, Mira-Bhayandar, he is directed to be released on bail on his executing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

iii) The Applicant No.2 shall attend the concerned Police Station as and when called and shall cooperate with the investigation.

iv) The Application is disposed of.

v) With disposal of anticipatory bail application, the interim application is also disposed of.

(SARANG V. KOTWAL, J.)