IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 126 OF 2024

Mahadev S/o Bapurao Gawale ...Applicant
Versus
State Of Maharashtra And Anr ...Respondents

Mr. Ashok M. Saraogi a/w. Ms. Priti Rao, Advocate for the Applicant.

Ms. Rutuja A. Ambekar, APP for the State.

Mr. Shivamsinh Deshmukh, a/w. Mr. Aditya Sharma a/w. Himanshu Aagrwal a/w. Mr. Tarun Shetty i/b. Bellator Legal Services LLP for Respondent No.2.

CORAM : RAJESH S. PATIL, J.

DATED : 25 FEBRUARY 2025

P.C.:

1. The Applicant is seeking anticipatory bail in connection with C.R.No.908/2023 registered at Oshiwara Police Station, Mumbai on 5.10.2023 for the offences under Sections 406, 409, 465, 467, 468, 471 of IPC.

2. The FIR is lodged by one Aakash Rajendraprasad Singh. The Informant has sated in the F.I.R. that his grand-father had two shops – one at Second Cross Lane, Lokhandwala and other at Sahakar Nagar, Apana Bazar, Andheri. Both these shops were having business of dairy

and were managed by the informant's father. The informant's grand-father executed gift deeds in respect of these two shops in favour of the informant by executing two deeds in the year 2016 and 2018. The informant's grand-father passed away in September, 2021. The present Applicant was assisting the informant's father in managing the shop at Andheri. According to the informant, the Applicant was working as a Manager. Slowly the informant's father started depending more and more on the Applicant. In June, 2023, the informant's father passed away. After that the informant went to the shop but the Applicant refused to handover possession and instead filed Civil Suit No.1654/2023 in the City Civil Court against the informant and his mother. The Applicant relied on certain documents in the nature of Promissory Note etc. which purportedly bore the signatures of the informant's father. It was contended by the Applicant that he had given Rs.1.50 Crores by way of loan to the informant's father and in lieu thereof he had taken the shop for running the business till 2032. According to the informant, all these documents were forged and, therefore, he filed the complaint. Initially, the informant approached the Magistrate's Court. An order under Section 156(3) of Cr.P.C. was passed, pursuant to which the FIR is lodged.

3. The Applicant's interim application in the suit filed before the City Civil Court was dismissed. Hence, he approached this Court by way of

Appeal From Order. However, no relief was granted to the Applicant in the said Appeal From Order. As a result, an SLP was preferred before the Supreme Court. Even in the said SLP, no relief was granted, and ultimately, I have been informed that the SLP was dismissed for non prosecution. Meanwhile, in the suit filed by the Informant, interim relief was granted in favour of the Informant.

4. In the present Anticipatory Bail Application, this Court, by an order passed by a coordinate bench on 17 January 2024, recorded the facts and granted four weeks time to the State to produce the handwriting expert's report on record. The said report dated 19 November 2024 was produced before me on 14 February 2025. It states that the signatures on documents Exs Q1 to Q3 were not written by the writer, who wrote those on Exs. N1 to N5. The writer in the said documents referred is the father of the Informant. As regards the signatures on other documents, the opinion of the examiner of documents, CID, indicates that there are insufficient identifying characteristics for comparison.

5. Today, before me, it was submitted on behalf of the Applicant that the Applicant is not claiming any ownership of the subject premises, and that his possession is solely due to the financial assistance provided to the father of the Informant. Documents in this regard, such as the promissory note, mortgage deed and agreement of sale, are on record.

The handwriting expert's opinion does not state that it was the Applicant who forged the signatures on the documents.

6. All the documents requested by the Investigating Officer have been handed over. The Applicant has attended the office of the Investigating Officer as an when he was called for. As suits between the parties are still pending, the custody of the Applicant is not necessary. Furthermore, the documents that the prosecution claims are forged have not been challenged by the Informant.

7. Therefore, the present Anticipatory Bail Application should be allowed and the Applicant will continue to cooperate with the Investigating Officer.

8. The learned APP submits that the offence under Section 409 is attracted in the present case, and the punishment for the same could be life imprisonment. She further submits that the documents submitted to the handwriting expert, namely the mortgage deed, indicate that there are two signatures for the witnesses. However, the mortgage deed referred to by the Applicant bears the signature of only one witness.

9. Therefore, it will be necessary to examine the second witness, namely Sachin Prabhudessai, to determine whether he personally endorsed his signature or if it was done by someone else.

10. Additionally, the original cheque referred in the present F.I.R. has

not been handed over to the Investigating Officer. It will be necessary to see as to who has signed the cheque and other details about the cheque is to be found, out only when the original cheque is handed over to the Investigating Officer.

11. As far as the agreement of sale is concerned, only a photo copy has been provided to the Investigating Officer. In order to make progress in the investigation, it is necessary that the Applicant be taken into custody.

12. Mr. Deshmukh, the learned Advocate appearing on behalf of Respondent No.2 submits that the observations made by the Judge of the City Civil Court while refusing to grant any relief to the Applicant (Plaintiff therein) are important to note. No relief was granted in the Interim Application preferred by the Applicant herein.

13. The Appeal from Order filed by the present Applicant was also dismissed, which refused to grant any relief. Similarly, no relief was granted in the SLP filed by the Applicant, and ultimately, the SLP was dismissed for want of prosecution.

14. The Informant filed a suit against the Applicant before the City Civil Court, and by an interim order passed in the Application preferred by the Informant, relief was granted in favour of the Informant.

15. The opinion of the Examiner of Documents, CID, undermines the

case of the present Applicant, as it states that the signatures on the mortgage deed, which the Applicant relies upon, do not belong to the father of the Informant. Therefore, it is evident that the Applicant has been claiming his rights based on forged documents. If not the Applicant, then who else would have manufactured these documents.

16. In support of his submissions he relied upon the Supreme Court order passed in the case of ***Sumitha Pradeep V/s. Arun Kumar C. K. & Anr*** reported in ***2022 SCC OnLine SC 1529***. He submits that the custody of the present Applicant is necessary.

17. I have heard the learned Advocate for parties and have gone though the documents referred by them and in particular document being the opinion of the examiner of the documents, CID, Mumbai.

18. The learned APP also produced before me the case file of the Investigating Officer, wherein the opinion of the handwriting expert along with the comments on the mortgage deed dated 18 May 2022 is shown to me.

19. At first glance of the mortgage deed, it is evident that two witnesses are shown after the receipt of payment. However, in the documents referred by the Applicant, only one witness is shown. Surprisingly, there is a rubber stamp of the notary. A mere glance at the documents reveals that the name of second witness, as shown on the

original appears to have been written after the notary has put his rubber stamp.

20. The signature on the said documents, purportedly belonging to the deceased father of the Informant (marked as Q1, Q2, and Q3), has been examined by the handwriting expert, whose opinion confirms that these signatures do not belong to the deceased father of the Informant.

21. As far as the suit filed by the Applicant is concerned, in the order dated 27 July 2023 passed by the Judge of the City Civil Court, while dismissing the Application preferred by the present Applicant, the Application of the present Applicant there are specific observations made in paragraph Nos. 15, 16 and 17 reads as under :-

> *"15. It appears that the plaintiff was assisting Rajendraprasad Singh during his life time. After the death of Rajendraprasad Singh, the plaintiff with malafide intention to grab the suit shop seems to have prepared forged documents in the name of Rajendraprasad Singh and put the bogus signatures on it, I say firmly for the reason that the defendants have produced on record the Agreement for Sale got executed by Rajendraprasad Singh of Flat No. 1301 dated 28.12.2017 from Dev Land & Housing Private Limited. In this documents, there is signature of father of defendant No. 2. By invoking powers vested under Section 73 of the Evidence Act, I compared signature of Rajendraprasad Singh which is on registered document i.e. Agreement for Sale of Flat No. 1301 and the documents produced on record by the plaintiff. If the signatures are compared with each other, a man of ordinary prudent will say that the signature on the documents produced on record by the plaintiff are not of Rajendraprasad Singh but some other person has signed the same. There is material difference in the admitted and disputed signatures of Rajendraprasad.*
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> *16 In my opinion, defendant No. 2 has taken legal action againa the plaintiff by filing complaint with the police alleging that the plainner has prepared forged documents in the name of his father and intended to grab his property. I am sure that the*

concerned police in due course will take necessary action against the plaintiff.

17 Be that as it may, the prima-facie documentary evidence produced on record by the plaintiff shows that the plaintiff approached the court with malafide intention to grab the suit shop on basis of false and fictitious documents and therefore, no relief as claimed by the plaintiff car be granted in his favour. As far as the case law relied upon by the learned Counsel for the plaintiff is concerned, in that matter the plaintiff was admittedly in possession of the suit premises as licensee. In view of that the Hon'ble Bombay High Court pleased to observe that the possession of the plaintiff should be protected till she evicted by following due process of law."

22. Coordinate bench of this Court while hearing the Appeal From Order filed by the present Applicant, has dismissed the Appeal From Order on 9 August 2023. The paragraph No.5 of the order dated 9 August 2023 reads as under :

"5.The learned Judge, City Civil Court, has ascribed justifiable reasons to decline to grant the interim relief. A prima facie finding is recorded that the plaintiff was assistant of Rajendraprasad Singh, the father of defendant No.1, who claims to be the owner of the suit premises, and after the demise of Rajendraprasad Singh, the plaintiff with mala fide intention forged documents to stake claim over the suit premises. It would be difficult, in exercise of limited appellate jurisdiction, to interfere with such a prima facie yet categorical finding recorded by the learned Judge."

23. In rhe SLP preferred by the present Applicant the Supreme Court has not granted any relief and the SLP was dismissed for non prosecution Therefore, the findings recorded by the Trial Court were confirmed first by the High Court and thereafter by the Supreme Court.

24. In the suit filed by the Informant before the City Civil Court, on 3 October 2023, while dismissing the interim application preferred by the Informant, the Court has held that the prima facie case for grant of temporary injunction has been made out by the plaintiff (Informant).

The paragraph No.21 and 22 of the order dated 3 October 2023 reads as under :-

> *"21. Thus, I am of the view that as the plaintiff is having clear title of the suit property, he cannot be relegated to file suit for declaration. Thus, I hold that the law laid down by the Hon'ble Supreme Court in the aforesaid ruling would not come in the way of the plaintiff in claiming injunction against the defendant who is stranger to the suit property.*
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> *22. The totality of the above discussion is that, the plaintiff has made out prima facie case for grant of injunction, balance of convenience lies in his favour and the injunction as prayed if refused, he would suffer irreparable loss which would not be compensated in terms of money, as such I answer point Nos.1 to 3 in the affirmative and pass the following order:*
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> *: O R D E R:*
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> *1) The Notice of Motion No.3260 of 2023 is allowed .*
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> *2) The defendant is temporarily restrained from causing obstruction and interference to the plaintiff's possession in the suit property i.e. Shop No.1, Twin Tower CHS, 2 Cross Lane, Lokhandwala Market, Andheri(West), Mumbai alongwith the open space adjacent to the Shop No.1 to the South side, an area admeasuring 900 sq.feet in the building known as Twin Towers Cooperative Housing Society Ltd., situated on Plot No.8A and 8B, Survey No.141, CTS No.1 of VillageOshiwara, Andheri, Mumbai 400 059, till disposal of the suit.*
>
> *3) The costs in cause.*
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> *4) The Notice of Motion No.3260 of 2023 stands disposed of accordingly."*

25. I was informed that the present Applicant has filed an Appeal From Order before this Court, challenging the order dated 3 October 2023, passed by the City Civil Court in the Informant's suit. However, as of today, no relief has been granted to the Applicant herein.

26. The learned APP's case is that the original cheque referred by the Applicant has not been handed over to the Investigating Officer.

Similarly, the original agreement of sale dated 4 October 2022 has not been handed over to the Investigating Officer. It will be necessary that these documents are handed over to the Investigating Officer for a proper investigation.

27. By failing to submit these documents to the Investigating Officer, I am of the opinion that the Applicant is not cooperating with the Investigating Officer.

28. It is also pertinent to note that the documents on the basis of which the Applicant is claiming that he is in possession namely promissory note, mortgage deed, and agreement of sale, all of these three documents refers to huge payment being made by the Applicant to the father of the Informant, which is around 1,50,00,000/- and in the agreement of sale as Rs.2,50,00,000/-. The claim of the Applicant is that the entire amount is paid by cash in the year 2022 for a property which is situated in the Mumbai city. It is difficult for me to believe the claim of Applicant at this stage.

29. The Supreme Court in case of ***Sumitha Pradeep vs. Arun Kumar C.K. and another***[1] in paragraph 12 has held as under :-

> "………. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial

1 (2022) 17 SCC 391

> interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail."

(Emphasis supplied)

30. Taking into consideration the facts recorded above, I am of the view that there is no merits in this Anticipatory Bail Application. Hence, the same stands rejected.

31. At this stage, Mr. Saraogi, the learned Advocate for the Applicant has sought a stay on the operation of this order and interim relief to be continued for eight weeks. However, the learned APP for the State has opposed this request on the ground that there is a possibility that the Applicant may put pressure on the witnesses who are yet to be examined by the prosecution. Therefore, they oppose granting a stay on the operation of this order.

32. Mr. Deshmukh, the learned Advocate for Respondent No.2 has also opposed the request of learned Advocate for the Applicants . Hence the request made by the learned Advocate for the Applicant is hereby rejected.

(RAJESH S. PATIL, J.)