

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2446-2447 OF 2014
(Arising out of SLP (Crl.) Nos. 3527-3528/2014)

RAKESH BABAN BORHADE

..Appellant

Versus

STATE OF MAHARASHTRA & ANR.

..Respondents

ORDER

R. BANUMATHI, J.

Leave granted.

2. These appeals by special leave challenge the Order dated 1.4.2014 passed by the Bombay High Court, in and by which, the High Court dismissed the anticipatory bail applications filed by the appellant while granting anticipatory bail to two other persons (Suresh Vallabhji Vora and Rajnikant N. Parekh) arrayed as accused in the same case.

3. Case of the prosecution arises out of a private complaint filed by M/s. Merit Magnum Construction alleging commission of offences against the appellant and other accused u/s 420, 406, 423, 424 r/w Section 34 IPC wherein directions were issued by the Magistrate u/s 156 (3) Cr.P.C. for proper investigation. Case of the complainant is that on 21.12.2005, the seven companies through their Directors entered into a Memorandum of Understanding (MOU) to sell the rights of their land to the complainant - M/s. Merit Magnum Construction, formerly M/s Vimal Builders. Till 2006, the complainant is said to have paid a sum of Rs.7,22,12,256/- to the said companies. It is alleged that inspite of the timely payment of Rs.7,22,12,256/-, the accused persons did not transfer the lands as promised in the MOU. It is the case of the complainant that during the period from 2005 to April 2013, the Directors and shareholders of the above mentioned seven companies- Suresh V. Vora, Rajnikant N. Parekh and the appellant- Rakesh Baban Borhade with common intention to deceive the complainant company avoided transferring ownership rights, interest, shares and related documents to the

complainant company and also deliberately suppressed several transactions relating to the property prior to MOU.

4. The Sessions Court dismissed the anticipatory bail application filed by the appellant and other accused. Aggrieved by the same, the accused persons moved the High Court, which vide its impugned order dated 1.4.2014 while granting bail to the other accused persons, dismissed the application of the appellant. The appellant is before us, assailing the correctness of the impugned order.

5. Mr. Ravindra Shrivastava, learned Senior Counsel for the appellant contended that the appellant became Director of Alpha Omega Home Fund Pvt. Ltd. only in November 2010 and that he was not a party to the MOU dated 21.12.2005 as at that time he was neither a shareholder nor a director of the said seven companies. Learned senior counsel has drawn our attention to the challans and cheques at pages 283-288 of the SLP paperbook and submitted that those cheques were meant for the companies mentioned therein and the appellant was not a beneficiary of those cheques. It was urged that in any event, entire case is based on documentary evidence which

is in the form of MOU dated 21.12.2005 and the registered sale agreements and bank cheques and challans and hence, the custody of the appellant is not at all required and the High Court was not justified in refusing anticipatory bail to the appellant.

6. Mr. Shekhar Naphade, learned Senior Counsel for the second respondent submitted that to unearth the trail of the transactions and the money received by the appellant, a thorough interrogation is necessary and the High Court rightly declined anticipatory bail to the appellant.

7. We have considered the submissions of the learned counsel for the appearing parties and perused the impugned order and the materials on record.

8. Sub-section (1) of Section 438 has been amended by Cr.P.C. (Amendment) Act 2005 (Act 25 of 2005), by which old sub-section (1) has been substituted by new sub-sections (1), (1A) and (1B). The guiding factors for grant of anticipatory bail have been mentioned in sub-section (1) of Section 438 itself. The Court would grant or refuse anticipatory bail after taking into consideration the following factors, namely:-

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested.

Anticipatory bail is not to be granted as a matter of rule, but should be granted only when a special case is made out and the Court is convinced that the accused would not misuse his liberty. After analysing various judgments and guidelines in *Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors.*, (2011) 1 SCC 694, this Court has enumerated the parameters that can be taken into consideration by the courts while dealing with the anticipatory bail.

9. In the light of the parameters laid down in *Siddharam Satlingappa Mhetre's* case, we have considered rival contentions of the parties. The dispute between the parties revolves around MOU dated 21.12.2005 and the previous MOU dated 3.2.2005. The dispute is purely a business transaction based on the said MOUs. According to

the appellant-accused, he sold the land belonging to his father in Survey No.75/18 to M/s. Siddhivinayak Enterprises by sale deed dated 31.12.2007 as legal representative of his father and there is no illegality involved in it. Whether the appellant-accused has sold the property to M/s. Siddhivinayak Enterprises in his capacity as the legal heir of his father or as a representative of the company and whether there was any dishonest intention to cheat the complainant remains to be seen only when the parties adduce oral and documentary evidence.

10. When the Special Leave Petitions came up for hearing, by order dated 9.5.2014 interim protection from arrest was granted to the appellant-accused and without prejudice to the contentions, the appellant was directed to deposit a sum of rupees one crore in the Registry of the Supreme Court and in compliance of the said order, the appellant has deposited rupees one crore. Since the transaction is in the nature of commercial transaction and since the appellant has also shown his bonafide by depositing rupees one crore, pending further investigation,

in our view, anticipatory bail could be granted to the appellant.

11. In the result, these appeals are allowed and the appellant is granted anticipatory bail on his furnishing a personal bond of Rs.25,000/- with two sureties of the like amount to the satisfaction of the trial court. The appellant shall co-operate with the investigating agency. Without prejudice to the contention of the parties, the complainant-second respondent (M/s.Merit Magnum Construction) is permitted to withdraw rupees one crore deposited by the appellant in this Court. Withdrawal of the said amount of rupees one crore by the second respondent shall be subject to the result of pending litigation between the parties or any other litigation contemplated by the parties pertaining to the MOU dated 21.12.2005. The appeals stand disposed of accordingly.

.....J.
(V. Gopala Gowda)

.....J.
(R. Banumathi)

New Delhi;
November 19, 2014