

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 250 OF 2015

Prakash s/o. Ramrao Deshpande

....Applicant.

Versus

The State of Maharashtra & Ors.

....Respondents.

Mr. Rajendra S. Deshmukh, Advocate for applicant.

Mrs. M.A. Deshpande, APP for State.

Mr. S.V. Adwant, Advocate for respondent No. 3.

CORAM : T.V. NALAWADE, J.

DATED : 6th February, 2015.

ORDER :

1) The application is filed for relief of anticipatory bail.

Both the sides are heard. Learned counsel Shri. S.V. Adwant was allowed to assist the learned APP.

2) Crime is registered on the basis of directions given by the learned Judicial Magistrate, First Class to make investigation under section 156 (3) of Criminal Procedure Code. Private complaint was filed by one Prafullchandra Kharche against the present applicant and the crime came to be registered for offences punishable under sections 406, 471, 420 etc. of Indian Penal Code.

3) It appears that 21 persons, employees of M.S.E.B., had formed a group and they had together purchased land admeasuring 1 Hecter 20 R. under sale deed. They had equally contributed for purchasing of the land and so they had equal share. They had come together for formation of a Co-operative Housing Society, but subsequently, they decided not to form such society.

4) Today a register came to be produced by the learned counsel for the applicant. This register is to be taken in custody and it is to be handed over by Registrar Judicial to Investigating Officer. It shows that there was the resolution that no co-operative society was to be formed.

5) Though there were in all 21 persons, 19 members gave general power of attorney to two persons like present applicant and one Ramesh Hiralal Gujrathi and they were to take steps for taking N.A. permission, for preparing lay out plan and laying the plots. Though initially it was to be done for society, the society was not formed. Thus, general power of attorney was executed on 7.2.1984. Then eight owners executed general power of attorney in favour of four persons who include present

applicant, complainant Prafullachandra Kharche, one Ramesh Gujarathi and Nandkishar Garge. It can be said that remaining members had not given such authority. There was the authority to distribute the plots amongst the members and sale the excess plots. As per the lay out, 29 plots were prepared in aforesaid land and so, there were 8 excess plots available. This document was executed on 23.8.1988.

6) It is the case of present applicant that the three persons, who were also given power of attorney, executed a consent document in favour of the applicant on 30.6.2004 and all the powers were given to the present applicant. Prima facie, it can be said that in law three out of four persons could not have delegated their power given to them by other eight members to do aforesaid acts to the applicant. In any case, these three members had put some conditions. They had made it clear that plot Nos. 1, 2, 3, 27, 28 and 29 were only to be disposed of and prior to that, 21 plots were to be allotted to the members.

7) It appears that the present applicant posed himself as Chief Promoter of one Ganesh Housing Society, he got entered his name in property card of all the plots and he disposed of almost all the plots. The learned APP submitted that

there is record of as many as 16 transactions and it can be said that complainant was party to at the most two transactions. The learned counsel for the applicant has produced copies of some sale deeds and he submitted that two plots were purchased from the members by the present applicant and others cannot have any grievance about it.

8) Even if the best possible case for applicant is considered, it can be said that his acts were not honest. This Court has gone through the affidavit. The submissions made and the contents of the affidavit show that the allotment of 21 plots was to be made as per the decision taken by the 21 members who had purchased the land together. Secondly, even if the present situation is considered as it is which is that there is availability of 13 plots and 12 members are saying that they have not got any plot, the fact remains that apparently, applicant illegally sold 7 plots and he did not offer or distribute the consideration in respect of those plots amongst the members. There are many other circumstances of the present matter due to which it can be said that the actions were not bonafide. It appears that by posing himself as Chief Promoter, on occasions, he has mortgaged some plots and taken loan also. When he was expected to take care of interest of 21 members,

he apparently deceived them and he has caused loss to them. It appears that behind the back of other members, he entered in to compromise in some suits also. Today only one register came to be produced. Entire material needs to be collected which will be relevant for considering the allegations made against the present applicant. Further, the consideration which came to the applicant from the sale of the plots needs to be recovered as that amount needs to be treated as stolen property.

9) The learned counsel for the applicant submitted that applicant is on the verge of retirement and due to some vested interest from his office, false allegations are made against him. He also submitted that doctors have advised him to undergo angioplasty. This Court had already advised the learned counsel to produce some certificate showing that on a particular date, he will be undergoing angioplasty and this Court had expressed that for particular period some protection can be given.

10) At this stage, when this Court is dictating the order, the learned counsel for the applicant submitted that he has information that the applicant has undergone sleep test and he is asked to use ventilation system for one hour every day. Such tactics are generally played by the accused, who

apprehends the arrest and there is much which can be said about such tactics. This Court had attempted to take care of such situation and specific direction was given to produce certificate showing that on a particular date, he will be undergoing angioplasty. No such certificate is produced.

11) In view of the aforesaid circumstances, this Court holds that it is not a fit case in which discretion can be used in favour of accused. The application is rejected. These observations are for the purpose of present proceeding only.

[T.V. NALAWADE, J.]

ssc/