

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2288 OF 2015

Gopal Radhesham Agrawal

.... **APPLICANT**

V E R S U S

The State of Maharashtra & Anr.

.... **RESPONDENTS**

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Mr. S.P.Brahme ,Advocate for Applicant.

Mrs. S.G.Chincholkar, A.P.P. for R.No. 1 – State.

Mr. Pawan B.Pawar, Advocate for first informant.

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CORAM : V.M.DESHPANDE, J.

DATE : 19th JUNE, 2015

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PER COURT :

1. Application u/s 438 of the Code of Criminal Procedure is before this Court today, since the applicant is apprehending his arrest in connection with Crime No. 62/2015 registered at Azad Nagar police station, Dist. Dhule for the offences punishable u/s 452,467,468,420,471,323,504 read with 34 of the Indian Penal Code.

2. Heard Mr. S.P.Brahme, learned counsel for the applicant, Mrs. S.G.Chincholkar, learned A.P.P. for respondent

No. 1 – State and Mr. Pawan B.Pawar, learned counsel for first informant in extenso.

3. First informant is maternal uncle of present applicant. He filed F.I.R. on 11/04/2015 with police station Azad Nagar against the present applicant and three others. They are his real brother Govind, his wife Minal and also the wife of the present applicant.

4. The sum and substance of the F.I.R. is that the first informant is owner of the house property situated at Ragrang Society. According to F.I.R., on 22/03/2015, present applicant and his brother Govind showed him the xerox copy of the agreement of sale and asked that the first informant should give Rs. 5,00,000/- [Rupees Five Lacs], otherwise he will be loosing his property. It is further alleged in the F.I.R. that on 10/04/2015, the person named in the F.I.R. entered into his house and gave threat to him that in spite of the time given to him of ten days, they have not received the amount of Rs. 5,00,000/- [Rupees Five Lacs]. Upon that the first informant retorted to the effect that he will not give a single rupee to them and in response to that the present applicant and Govind gave two fist blows.

5. While considering the present Criminal Application, one fact has to be mentioned is that the Suit is filed against the first informant by Govind for specific performance of contract. Said Suit is registered as Special Civil Suit No. 24/2015. By the said Civil Suit, specific

performance of agreement of sale dated 27/07/2011 is claimed by plaintiff Govind against the first informant Santosh.

In the agreement of sale dated 27/07/2011, present applicant is a witness. The summonses of that Suit were received by the first informant on 24/03/2015. F.I.R. is lodged on 10/04/2015. Thus, the F.I.R. is lodged after the receipt of the summons of Special Civil Suit No. 24/2015.

6. Further, it is stated in the F.I.R. that the first informant claimed that on 22/03/2015, xerox copy of the agreement of sale was shown to the first informant. Thus, on 22/03/2015 itself the first informant was having knowledge that agreement of sale is in existence, though according to the first informant, the same is brought into existence fraudulently. However, for the reasons best known to the first informant, from 22/03/2015 till 10/04/2015 he chose not to report to the police and chose to remain silent. Thus, there is considerable delay in lodging the F.I.R.

7. Further, it is not stated in the F.I.R. that the present applicant is instrumental in creating the document dated 27/07/2011, the agreement of sale which is executed in favour of Govind.

Learned A.P.P. and the learned counsel for the first informant submitted that the custody of the present applicant is necessary to investigate as to whether the present applicant is involved in such type of cases. Investigating Officer can not claim custody for roving and fishing enquiry.

8. It is also brought to the notice of this Court and there is no dispute that Govind, in whose favour agreement of sale is executed, is released on bail by the Court below.

While granting ad-interim anticipatory bail in favour of the present applicant, the applicant was directed to attend police station Azad Nagar on 12/05/2015, 19/05/2015, 26/05/2015 and 02/06/2015. Learned counsel for the applicant has submitted that the applicant has attended police station on those dates. Investigating Officer has not disputed the said aspect.

9. Looking to the over-all survey of the prosecution case, present Criminal Application needs to be allowed and accordingly it is allowed.

10. Hence, I pass the following order :

(i) Present Criminal Application is hereby allowed.

(ii) In the event of arrest in connection with Crime No. 62/2015 registered at Azad Nagar police station, Dist. Dhule for the offences punishable u/s 452,467,468,420, 471,323,504 read with 34 of the Indian Penal Code, applicant Gopal Radhesham Agrawal be released on anticipatory bail on he executing P.R. Bond of Rs. 25,000/- [Rupees Twenty Five Thousand] with one solvent surety of like amount.

(iii) Present Criminal Application is disposed of.

[V.M.DESHPANDE, J.]

KNP/Cr.Apln. 2288.2015