

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

CRIMINAL APPLICATION NO.4716 OF 2015

1. Vishwanath s/o Sahebrao Daud,
Age 71 years, Occu. Agril.,
R/o Panvadod (Bk.), at present
Plot No.5, Prasanna Data Park,
Deolali, Taluka and District
Aurangabad
2. Ganesh s/o Vishwanath Daud,
Age 37 years, Occu. Driver,
R/o As above ..Applicants

Versus

- The State of Maharashtra,
through Police Station,
Sillod (City), Taluka Sillod,
District Aurangabad ..Respondent

Mr B.G. Sagade, Advocate for applicants
Mr S.M. Ganachari, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 14th October 2015

PER COURT

Heard.

2. The applicants are seeking pre-arrest bail, who are booked in Crime No.I-91/2015 registered at Sillod Police Station, District Aurangabad, for offence punishable under Section 420 read with sec.34 of Indian Penal Code.

2. It is the case of the prosecution that the applicant No.1 herein has entered into an agreement of sale on 2nd February 2015 for sale of his 1 hectare 72 R land out of Gut No.365 at Panvadod for a

consideration of Rs.12 lakhs. On the date of agreement of sale, the applicant No.1 has accepted consideration of Rs.3 lakhs.

3. The prosecution then alleged that though the said land was not available on record, he has agreed to sell the same, as part of the land of 2 hectare was already transferred by him in favour of one Annasaheb Shirsath on 23rd December 1988. According to prosecution, the applicant No.1 herein is in habit of misusing the entry in 7/12 extract which is not corrected by demonstrating that the land was acquired from Gut No.365 for irrigation purpose.

4. Learned Counsel for the applicants while making out the case for grant of pre-arrest bail would urge that the applicants are falsely implicated in crime. He would submit that as on date, 1.72 hectare land is available with the applicants and applicant No.1 is ready and willing to honour the terms of the agreement entered between the complainant and the applicant No.1 on 2nd June 2015. In addition to above, he would urge that the nature of allegations would invite only civil consequences and there is no criminal element so as to infer that the applicants have committed the crime in question. Apart from above, the applicant No.2 has hardly any connection with the crime in question, as he is neither a party to the agreement nor anyway directly or indirectly involved in crime in question.

5. Having bestowed my anxious considerations to the submissions made by the parties, it is noted that the dimensions of land to the

extent of 1.72 hectare out of Gut No.365 as mentioned in the agreement dated 2nd June 2015 and that of the sale-deed executed on 23rd December 1988 in favour of Annasaheb Shirsath by the present applicant No.1 appear to be same. In the statement of Annasaheb Shirsath, it is in clear terms reflected that the land to the extent of 2 hectare, which is sold to him by present applicant No.1 in 1988 was already acquired by the State Government, still the applicant No.1 has sold the said property taking undue advantage of entry in 7/12 extract. In my opinion, there is prima facie case available against applicant No.1. As such, the bail application of applicant No.1 stands rejected.

6. So far as the application of applicant No.2 Ganesh Vishwanath Daud is concerned, perusal of the record depicts that he is not named in any of the document, as were entered into between the complainant and applicant No.1. Apart from the fact that he is owner of independent portion to the extent of 0.16 R land out of the same Gut number, which is not the subject matter of present dispute.

7. In view of above background, in my opinion, the applicant No.2 Ganesh is entitled for grant of protection. As such, I proceed to pass the following order :

(I) In the event of arrest in connection with Crime No.I-91/2015 registered at Sillod Police Station, District Aurangabad for offence punishable under Section 420 read with sec. 20 of the Indian Penal

Code, the applicant No.2 - Ganesh Vishwanath Daud be released on bail, upon furnishing P.R. Bond of Rs.15,000/- (Rs. Fifteen thousand) with one surety in the like amount;

(II) The applicant No.2 - Ganesh shall attend the concerned Police Station initially for two days from 10.00 am to 11.00 am and thereafter as and when called by the investigating Officer.

8. Criminal Application stands allowed to the extent of applicant No.2 - Ganesh Daud.

9. Learned A.P.P. is hereby directed to communicate this order to the learned Tahsildar of the concerned Tahsil so that the Tahsildar can carry out appropriate corrections pursuant to the provisions of Maharashtra Land Revenue Code in the matter of revenue entries of Gut No.365, so that the applicant No.1 will not be able to take undue advantage hereinafter.

(N.W. SAMBRE, J.)

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