

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.549 OF 2015

Shri Jagdish Uttareshwar Borade ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.S.V. Kotwal i/b H.E. Palwe for the Applicant

Mr.Arfa Sait, APP, for Respondent – State

Mr.M.V. Thorat for Complainant

Mr.K.N. Chavare, PN/1044 – EOW, Solapur City - present

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JUNE 8, 2015**

P.C.:

1. This is an application for anticipatory bail by the applicant/accused who is apprehending arrest in C.R. No.415 of 2013 which was registered with Sadar Bazar police station for the offences punishable under sections 406, 420, 468, 504, 506 r/w 34 of the Indian Penal Code. The crime was registered on 26.12.2013 at the instance of one Arun Shankar Godse. The applicant/accused is accused No.3 and accused No.1 Nandkumar Borade is his real brother and accused No.2 is the wife of Nandkumar. Nandkumar was working in a revenue department in the office of Sub-Registrar, Solapur. Nandkumar with the help of his wife and in the present case, with the help of the applicant/accused, his brother, deceived the applicant/accused by showing a false property record of a land and

induced him to buy that land and part with the amount of Rs.1,35,00,000/-. It is the case of the prosecution that the applicant/accused has played an active role misrepresenting that he is the owner of the land which was offered to the informant.

2. The learned Counsel for the applicant/accused has submitted that the plot Nos.5 and 6 for which the transaction has taken place, the applicant/accused was not a party to such agreements, but the applicant/accused No.2 Suhasini has entered into agreements with the informant and the Developer. He submitted that he is not concerned with this transaction. He is not a public servant and this is the only case pending against him. He also pointed out that the relevant portion from the order of the learned Sessions Judge rejecting the application of this applicant/accused.

3. Learned Prosecutor has pointed out that a proclamation is issued against the applicant/accused alongwith the co-accused by the learned Magistrate, Solapur and it is in force. He relied on the judgment of the Supreme Court in the case of **Lavesh vs. State (NCT of Delhi)**¹. He submitted that the Supreme Court has taken a view that once a proclamation is issued against the person or a warrant is issued against an absconder, then he is not entitled to anticipatory bail.

1 (2012) 8 SCC 730

4. Perused the record and the order of the learned Sessions Judge. It appears from the record that the applicant/accused has no prima facie case on merits. Moreover, in ***Lavesh vs. State (NCT of Delhi) (supra)***, the hon'ble Supreme Court in paragraph 12 has held as follows:

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

5. The proclamation is issued against the applicant/accused and therefore, the Anticipatory Bail Application is rejected.

(MRS.MRIDULA BHATKAR, J.)