

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (ABA) No.31/2015
Aqul Khan s/o Abdul Akil Haji Sheikh Rahim Vs. State of Maharashtra.

Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

Shri N.P. Pathan, Advocate for the applicant
Shri D.B. Patel, APP for the non-applicant/State.

CORAM : PRASANNA B.VARALE, J.
DATE : FEBRUARY 25, 2015.

The applicant apprehending his arrest in Crime No. 4/2005 registered at Sadar Police Station, Nagpur, for the offence punishable under Sections 420, 468, 472 read with Section 34 of the Indian Penal Code, is before this court seeking protection in the nature of pre-arrest bail. The learned counsel for the applicant by inviting my attention to the report vehemently submitted that the applicant, who is dealing in real properties and was having acquittance with the complainant. The submission of the learned counsel is, the complainant parted away the amount to other accused one Shrikant Pimplapure. The learned counsel vehemently submits that apart from an acquaintance with the complainant, there is no material against the applicant. He submits that in the report it is not stated by the complainant that it was the intention, motive and knowledge of the complainant that the applicant by hatching a plan with the other accused, collected some amount for his personal gain. The learned counsel then submits that the material collected by the Investigating Agency against the applicant in the process of investigation is only in the form of the statement of the co-accused. The submission of the learned counsel

was even though the material is considered, the statement of the co-accused refers to some amount received by the other accused. Thus, the learned counsel submitted that, this is a case of no material against the applicant and the applicant be protected.

The learned APP opposes the application and relied on the reply filed by the State. On the backdrop of the submission of the learned counsel for the applicant, the report is perused. The report reveals that the applicant who had an close acquaintance with the complainant approached the complainant and informed in February 2014. He informed the complainant that there is a land in the area of Nagpur Municipal Corporation to extend of 59.60 sq. meters. The applicant informed the complainant that the owner is in dire need of money and as such he is willing to sell the plot at lower rates. The complainant then proceeded to that plot along with the applicant and met one Shrikant Pimplapure there. Shrikant Pimplapure shown certain documents of year 1986 namely the sale deed. The applicant assured the complainant that these are the genuine documents and the complainant shall enter in the transaction on the assurance of the applicant, as the applicant owes the responsibility of the genuineness of the documents. The complainant wanted some time and the applicant was consistently impressing upon the complainant by visiting him constantly for purchase of the said plot. On 16th February, 2014 the applicant and the other accused Shrikant Pimplapure attended the complainant and the amount of transaction was fixed @ Rs 18 lakhs. The applicant informed the complainant to part away the amount of Rs. Ten lakhs as an advance. The complainant handed over an amount of Rs.21,000/- as an advance and informed that the rest of the amount would be paid on the next date.

On next date i.e. 17th February, 2015 the applicant and Shrikant Pimplapure again approached the complainant. He gave cheque of Rs. Three lakhs and an amount of Rs. Seven lakhs in cash. Thus, in total Rs.10,21,000/- as an advance amount. On 20th February, 2014 the applicant then approached the complainant with one Dewanand Kawade and Diwakar Tidake. He was insisting the complainant for purchase of the plot. One of the friends of the complainant Mr. Ansar was also insisted by the applicant for purchase of the said property and that transaction took place on 15.6.2014. When the complainant thereafter two months was insisting for registration, the applicant was avoiding by giving one or the other pretext. The complainant then approached the Registrar office and to his shock it revealed that these properties do not stand in the name of either Shrikant Pimplapure or Dewanand Kawade. Accordingly, the complainant approached the police authorities.

Thus, the report reveals clear picture of the role played by the applicant more than the acquaintance of each and every stage the applicant was the instrumental person approaching the complainant, insisting upon him to purchase the property informing him that the properties available at lower rates, giving assurances to the complainant that the documents are the genuine documents. The role, thus played by the applicant, travels beyond the simple facilitator of purchase of the property. The learned counsel for the applicant vehemently submitted that it is not reflected in the report the intention, motive and purpose of the applicant of deceiving the complainant, in clear words. It is settled position of law now that, the First Information Report cannot be treated as if encyclopedia giving all the minute details and descriptions. The intention of deceptive can be

gathered by the alleged act or by collection of the necessary material in the process of investigation. The submission of the the learned counsel cannot be accepted on other aspects also namely, the first information report cannot be treated as encyclopedia giving a graphic, minute and arithmetical disclosure of an offence. What is material is, the role played by the applicant reflected in the report. The investigation is at preliminary stage. The complainant, who on receiving evasive replies by the applicant approached Registrar office and found that the property do not stand in the name by either Shrikant Pimplapure or Kawade and it was natural that the complainant received a shock on the backdrop of the fact of parting away handsome amount to the tune of Rs. 10,21,000/- as an advance.

The reply filed by the State shows that by the same modus operandi other person Mr. Mohd. Ansar was also subjected to cheating. The learned counsel for the applicant was right in submitting that the confessional statement of a co-accused would have limited worth. But, on the backdrop of other material and the role played by the applicant is clearly reflected in the first information report. The Investigating Agency will have to conduct a probe in the matter. For such deep and probe, the custodial interrogation of the applicant would certainly be necessary, as a key role is played by the the applicant.

Considering all these aspects, in my opinion, the application is devoid of merits. The application deserves to be rejected and the same is accordingly rejected.

Needless to state that the interim protection granted by this Court by February 13, 2015 granted to the applicant stands vacated.

JUDGE

Ambulkar