

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

Criminal Application [ABA] No.174 of 2015

(Sayyad Parvez Rizvi s/o Farid Rizvi

vs.

State of Maharashtra, through P.S.O. Yashodhara Nagar, Nagpur)

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

Court's or Judge's Orders

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Mr. A.M. Gordey, Sr. Adv. with Mr. N.B. Lambat, Adv. for the Applicant.
Mr. M.J. Khan, A.P.P. for the Non-Applciant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : MAY 5, 2015.

Heard Mr. Gordey, the learned Senior Counsel
with Mr. Lambat, the learned Counsel for the applicant.

This Court while issuing notice referred to the
submissions of the learned Counsel appearing for the
applicant and granted *ad interim* protection to the applicant.

Learned Senior Counsel Mr. Gordey in his detailed
submission, by inviting my attention to the report lodged at
the instance of Mr. Chandrakant Sawarkar to Police Station
Yashodhara Nagar, Nagpur, submitted that the report is
nothing but a bundle of vague facts. Mr. Gordey submits that
as the informant did not bother to refer to the document,
wherein the mischief is played and the document is allegedly
fabricated, as such the report is solely insufficient to attract
any criminal act against the applicant for the offences under

Sections 468 and 469 of the Indian Penal Code. Learned Senior Counsel Mr. Gordey further submits that even the report falls short to attract Section 420 of the Indian Penal Code, as it only makes out a vague allegation of trespass over the property. Mr. Gordey then invited my attention to the documents placed on record in support of his submission that the transaction between the party was purely a civil transaction and there is a chequered history of the events, namely the release order passed by the Government, the agreement between the parties to develop the property, the General Power of Attorney executed, the sale-deed and the documents reflecting that the possession was handed over. Firstly Mr. Gordey, by invited my attention to the order passed by the competent authority under Urban Land (Ceiling and Regulation) Act, dated 03/10/2000, submits that the order itself permit development of the property under Clause-6, which reads thus :

“The said person shall sell the plots to the intending purchasers with a person of two years from the date of this exemption order. The said person/purchaser shall commence and complete the construction within a period of 5 years from the date of exemption order.”

Mr. Gordey, then by inviting my attention to the Annexure of this release order, wherein a reference is made to the applicant as the power of attorney holder and also a reference is made to the informant/complainant as a person holding the land. Mr. Gordey, then again by inviting my attention to the agreement between the parties i.e. the applicant, the informant/complainant and his other family members including two sons, sister-in-law, nephew and daughter, submits that all the details are referred to in this document even the share received by the sons and the other family members. The document in clear terms permits the applicant to develop the property, to accept the advance amount and also to take steps for approaching various Government Offices for seeking permissions etc. Mr. Gordey, the learned Senior Counsel, then by inviting my attention to the document placed on record as Annexure-5, which is named and styled as Agreement to Sale and Possession Receipt, submits that the sons of the informant/complainant namely Dinesh and Rakesh, who are party to this document, in clear terms agreed that the total consideration is received by them and the applicant was permitted to develop the property as per the Government rules. They also agreed in terms that the applicant should bear the burden of payment of

municipal taxes, development charges etc. Mr. Gordey also invited my attention to the Agreement to Sale and Possession Receipt placed on record as Annexure-6 executed by the nephew of the informant/complainant viz. Mr. Ujwal Sawarkar. Though there is nothing on record that Mr. Ujwal Sawarkar made any grievance, Mr. Gordey submits that this document only shows the *bona fides* of the applicant. Mr. Gordey submits that in the transaction between the applicant and Mr. Ujwal Sawarkar, Mr. Ujwal also admitted that the total consideration is received by him and a part of the consideration was paid through cheques. The submission of Mr. Gordey is, the applicant, who entered in the transaction since beginning, completed each transaction with *bona fide* intention with the informant/complainant, his sons and nephew. The submission was, if the applicant was carrying any ill intention, there was no reason for the applicant to part away the amount through cheques. The learned Senior Counsel thus on the backdrop of the reference to all the documents submitted that the transaction between the parties is purely of a civil nature transaction and with some ill-intention, the informant/complainant has falsely implicated the applicant. Mr. Gordey then on the backdrop of the reply filed by the State submitted that there is no sufficient reason

coming forward for custodial interrogation of the applicant except a reference that the applicant has not handed over the original Agreement to Sale and its photocopy to the investigating agency. Mr. Gordey, on instructions, submits that the applicant to show his *bona fides* is ready to hand over the original Agreement to Sale to the investigating agency and his concern is that the said document may not be kept with the agency for indefinite period and it be handed over to the applicant within a reasonable period so that the applicant should prosecute some civil remedy and in that case the said document would be necessary for the applicant.

Mr. Khan, the learned A.P.P. vehemently opposes the application. The learned A.P.P. submits that in the process of investigation, the investigating agency recorded some statements of the witnesses. The witnesses stated that though they were shown as witnesses to the documents, the so called vendors have not signed the documents in their presence. The learned A.P.P. submitted that as the original document is not available with the investigating agency, the investigating agency will face difficulty in assessing the document and the photocopy if sent to the experts, no fruitful purpose would be served.

On going through the documents placed on record and on the backdrop of the submission of the learned Senior Counsel Mr. Gordey for the applicant, I find considerable merit in the submission of Mr. Gordey that the release order, which is of the year 2000, itself shows that the applicant was the power of attorney holder referred to in the release order and the Clause-C of the release order permits the person to develop the property. The other documents are also in the nature of permitting the applicant to develop the property and receiving the amount by the sons of the informant. The purpose seeking custodial interrogation reflected in the reply filed by the State that the original document is not handed over to the investigating agency can be achieved now in view of the submission of the learned Senior Counsel that the applicant is ready to hand over the original document to the investigating agency. It is not the case that the applicant is having any criminal antecedents.

Considering all these aspects, in my opinion, the learned Senior Counsel for the applicant has made out a case for grant of protection to the applicant. The apprehension of the State can be taken care of by imposing certain conditions of attendance on the applicant.

In the result, the application is allowed. The interim protection granted by this Court by order dated 01/04/2015 is confirmed with conditions that the applicant to attend the Police Station Yashodhara Nagar, Nagpur on every second and fourth Sunday of the month between 09:00 a.m. to 12:00 p.m. and maintain a diary of his attendance duly countersigned by the Police Station Officer or the Investigating Officer till the charge-sheet is filed.

The applicant to hand over the original document to the investigating agency within a week from today. The investigating agency may keep the document for the purpose of investigation for a reasonable period. If the document is retained with the investigating agency beyond the reasonable period and such retention is causing prejudice to the applicant, the applicant would be at liberty to approach this Court.

The application is disposed of in above terms.

JUDGE

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