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

Criminal Application No. 4840 of 2016

District : Aurangabad

Pooja d/o. Gopal Rathod,
Age : 25 years,
Occupation : Business,
R/o. 'Gopal Sadan',
House No. 6-8-338,
Padmapani Colony,
Railway Station-
Kranti Chowk Road,
Aurangabad,
Taluka & District : Aurangabad. .. Applicant.

versus

1. The State of Maharashtra,
through Police Sub-Inspector,
Kranti Chowk Police Station,
Aurangabad,
Taluka & District : Aurangabad.

2. The Commissioner of Police,
Aurangabad. .. Respondents.

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Mr. Rajendra S. Deshmukh, Advocate, for the applicant.

Mr. A.S. Shinde, Addl. Public Prosecutor, for respondent nos.1 and 2.

Mr. V.D. Sapkal, Advocate, for the original complainant.

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With

Criminal Application No. 4963 of 2016

District : Aurangabad

Sandeep s/o. Prakash Hivrale,
Age : 31 years,
Occupation : Business,
R/o. 7169, Bhadkal Gate,
Aurangabad. .. Applicant.

versus

The State of Maharashtra,
Through the Commissioner of Police,
Aurangabad. .. Respondent.

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Mr. S.G. Ladda, Advocate, holding for Mr. S.J. Rahate, Advocate, for the applicant.

Mr. A.S. Shinde, Addl. Public Prosecutor, for the respondent.

Mr. V.D. Sapkal, Advocate, for the original complainant.

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CORAM : A.M. BADAR, J.

DATE : 14TH SEPTEMBER 2016

ORAL ORDER:

Applicants Pooja d/o. Gopal Rathod and Sandeep s/o. Prakash Hivrale, who are accused in Crime No. 725/2016, for offences punishable under Sections 420, 406, 468, 471, read with Section 34 of the Indian Penal Code, registered with Police Station, Kranti Chowk, Aurangabad, by these applications, are seeking pre-arrest bail.

2. Heard the learned Counsel appearing for applicants. They submitted that the transaction in question is predominantly of civil nature for which a civil suit lies. They further argued that the agreement to sell was executed in favour of Saluji s/o. Vitthalrao Kale on 12.10.2015 by Kamlabai Laxmandas Rathod and Pooja Gopal Rathod was just a consenting party to the transaction. The learned Counsel further argued Saluji Kale had given a no objection certificate certifying that the agreement to sell has been cancelled and he has received back an amount of Rs. 20,00,000/-. Therefore, in submission of the learned Counsel for applicants, now informant Rama Vitthalrao Kale has no right whatsoever to lodge FIR against accused persons. The learned Counsel further argued that there are several offences registered against Rama Kale / informant as well as Saluji Kale. My attention is drawn to complaints dated 01.03.2016 and 05.03.2016 lodged by Shobha Prakash Hivrale with Police Commissioner and Police Inspector against the informant. Similarly, reliance is placed on report dated 01.10.2016 lodged by Umesh Babasaheb Gawali against informant Rama Kale which has resulted in registration of offence

punishable under Sections 494, 495, read with Section 34 of the IPC against informant Rama Kale. The learned Counsel further relied on report lodged by Umesh Gawali on 20.10.2011 for offences punishable under Sections 323, 506, read with Section 34 of the IPC against Saluji Kale, so also FIR in Crime No. 64/2001 under Sections 448, 504 and 506 of the IPC against informant Rama Kale. Applicants have also placed reliance on FIR in Crime No. I-41/2002 for offences punishable under Sections 143 and 336 of the IPC l;odged by Laxman Nagargoje against informant Rama Kale; Crime No. I-244/2002 under Sections 448, 188, 427, read with Section 34 of the IPC against informant Rama Kale and FIR in Crime No. 144/2014 under Sections 452, 323, 504 and 506 of the IPC against the informant. It is also argued that the informant was convicted by the learned Judicial Magistrate (F.C.), 4th Court, Aurangabad, on 06.04.2011 for the offence punishable under Section 448 of the IPC. With this, the learned Counsel for applicants submitted that considering criminal antecedents of the informant, possibility of false implication of applicants cannot be ruled out.

3. As against this, the learned Addl. Public Prosecutor opposed applications by contending that statement of Kamlabai Rathod goes to show that she had not executed general power of attorney in favour

of applicant Pooja Rathod. The learned Addl. Public Prosecutor further argued that the amount received by applicant Pooja Rathod is not yet refunded. Applicant Sandeep Hivrale had issued a cheque in the year 2016 for an amount of Rs. 18,00,000/- in favour of common friend namely Ritesh Chaudhary but his account was closed way back in the year 2010. It is also argued that bogus P.R. Card was prepared by applicants in order to show ownership of Kamlabai Rathod over the property. In succession certificate proceedings, applicant Pooja Rathod had committed offence of impersonation and accordingly at the instance of the Court, the Superintendent had lodged FIR against her.

4. I also heard the learned Counsel appearing for the informant. By taking me through the Property Registration Card showing name of original owner as Laxman s/o. Dagdu Sheth, the learned Counsel appearing for the informant argued that false documents are created by applicants in order to show ownership of Kamlabai Rathod over the property in question. The learned Counsel argued that name of father of Laxman was Bansilal but forgery was done with an intention to cheat the informant. It is also argued that a cheque was deliberately given through applicant Sandeep Hivrale in favour of Ritesh Chaudhary. Therefore, according to the learned

Counsel for the informant, thorough investigation of the crime in question is required in order to ascertain offences committed by applicants and also for collecting evidence.

5. I have perused papers of investigation including the FIR of the crime in question. Rama Kale lodged FIR on 28.07.2016 against present applicants by contending that with with intervention and assistance of applicant Sandeep Hivrale, she decided to purchase a house from Kamlabai Rathod and for that purpose, she has got an agreement executed on 12.10.2015. The FIR reveals that consideration fixed was Rs. 50,00,000/-. The informant further contended that she had taken some amount for this transaction from her brother Saluji Kale and her nephew Harshal Kale. The FIR reveals that the informant paid an amount of Rs. 21,00,000/- to applicant Pooja Rathod for purchasing the house property but owner of the said property so also applicant Pooja Rathod failed to execute sale deed. On insistence to refund the earnest amount of Rs. 21,00,000/-, according to the informant, an amount of Rs. 6,00,000/- was refunded in cash and gold chain worth Rs. 70,000/- was handed over. The informant further averred that balance amount of Rs. 14,30,000/- is not refunded by applicant Pooja Rathod nor sale deed of the house property was executed by

her grandmother Kamlabai Rathod.

6. Bare perusal of the FIR prima facie shows that the transaction between the informant and applicant Pooja Rathod was predominantly of civil character. If the informant was not satisfied with the conduct of applicants, she was having remedy of filing civil suit for specific performance of contract. This is particularly so because agreement dated 12.10.2015 for sale of the house property is shown to have been executed by Kamlabai Rathod in favour of Saluji Kale - brother of the informant. Applicant Pooja Rathod is shown as the consenting party to the transaction. Then there is no objection certificate stated to have been issued by Saluji Kale. He is a party to the agreement. By this no objection certificate, Saluji Kale has certified that the transaction between him and Kamlabai Rathod is cancelled and he has received the entire amount of Rs. 20,00,000/-. In no objection certificate, Saluji Kale has also certified that he has returned original papers of the property to the owner.

7. So far as alleged tampering of Property Card is concerned, averments to that effect and the evidence in that regard is in the form of documents. For that purpose, custodial interrogation of both applicants is not at all warranted.

8. Hence, I pass the following order :-

(a) Both Applications are allowed.

(b) Applicants / accused, in the above crime, in the event of their arrest, be released on bail on their executing P.R. Bond in the sum of Rs. 25,000/- each and on furnishing one or more solvent sureties of the like amount by each of them, on the following conditions :-

(i) Applicants - accused shall attend concerned Police Station initially on 21st September 2016 and 24th September 2016, in between 11.00 a.m. and 01.00 p.m. and thereafter as and when reasonably called by the Investigating Officer for the purpose of investigation, till filing of the charge-sheet against them. They shall cooperate the Investigating Officer in investigation of the crime in question.

(ii) Applicants shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(iii) Applicants shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial, in the event of filing of charge-sheet, if any, against them.

(iv) Applicants shall not repeat commission of similar type of offences in future.

9. Applications stand disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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