

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

Criminal Application No. 5185 of 2016

District : Aurangabad

Chandu s/o. Prabhakar Naidu,
Age : 74 years,
Occupation : Nil,
R/o. Laxmi Niwas, Jyotinagar,
Dargah Road, Aurangabad,
District : Aurangabad.

.. Applicant.

versus

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

2. The Commissioner of Police,
Commissioner Office
at Aurangabad,
District : Aurangabad.

.. Respondents.

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Mr. Govind A. Kulkarni, Advocate, for the applicant.

*Mr. S.P. Sonpawale, Addl. Public Prosecutor, for
respondent nos.1 and 2.*

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CORAM : A.M. BADAR, J.

DATE : 10TH OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No.

724/2016 registered with Kranti Chowk Police Station, Aurangabad, for offences punishable under Sections 420, 467, 468, 471 and 506 of the Indian Penal Code, by this application, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that the applicant was not entitled to execute the sale deed as per the recitals in the general power of attorney. He argued that the sale deed was executed in favour of the informant by one Sayed Mohammed Akbar Hussain and not the present applicant. It is further argued that the applicant had paid an amount of Rs. 50,000/- to the informant and for bounced cheques he is facing prosecution under the Negotiable Instruments Act. Therefore, according to the learned Counsel, the applicant is entitled for pre-arrest bail because the entire transaction is of civil nature.

3. The learned Addl. Public Prosecutor argued that the applicant is not entitled for pre-arrest bail because the plot of land was not even owned by Sayed Mohammed Akbar Hussain, in whose behalf the applicant had dealt with the informant.

4. Perused the FIR lodged by Sumanbai w/o. Tukaram Suradkar. She averred that in the year 2004, the applicant represented her that being a general power of attorney holder of Sayed Mohammed Akbar

Hussain, he is entitled to sell a plot of land owned by Sayed Mohammed Akbar Hussain. Accordingly, the applicant sold one plot from Survey No. 14814/A2/2 to the informant by accepting consideration of Rs. 1,20,000/-. The informant further averred that thereafter the applicant informed her that there is some dispute in respect of the plot and he will give another plot. Accordingly by accepting an amount of Rs. 50,000/-, the applicant assured the informant that another plot will be allotted to her. This happened on 25.08.2004. The informant further alleged that the applicant had not given a plot of land to her by executing the transfer deed. He had given four cheques out of which only one amounting to Rs. 20,000/- is encashed whereas rest of cheques for Rs. 1,00,000/- were dishonoured.

5. The power of attorney shows that the applicant was not entitled to sell out the plot of land, still the FIR shows that the applicant represented the informant that he is in a position to sell out the land in question to her. Though the transaction took place in the year 2004, the applicant was not handed over possession of the plot, as seen from the FIR. Therefore mere recitals in the sale deed to that effect is of no consequence. The applicant is one of the signatory to the sale deed. He had actively taken part in cheating the informant. The prosecution for the offence punishable under the

Negotiable Instruments Act, 1881, is totally a different thing.

6. Considering the nature of offence and the fact that by making a false representation, the applicant had cheated the informant, no case for pre-arrest bail is made out.

7. The Application is accordingly rejected.

(A.M. BADAR)
JUDGE

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