

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

CRIMINAL APPLICATION NO. 6980 OF 2015

Rajesh S/o. Murlidhar Kawale,
Age : 39 years, Occu. Business,
Office at Ravet Pune,
R/o. Vishal Nagar, Tq. & Dist. Latur. ... Applicant

VERSUS

The State of Maharashtra ... Respondent

.....
Mr Vikram R. Dhorde, Advocate for the applicant
Mr S. M. Ganachari, APP for respondent/State
.....

**WITH
CRIMINAL APPLICATION NO. 453 OF 2016**

1. Siddheshwar S/o Dagadappa Kshirsagar,
Age : 40 years, Occu. Service,
R/o. Shiv Nagar, Near Rajmata Schoo,
Latur, Dist. Latur.
2. Ramakant S/o. Shivajirao Shinde,
Age : 35 years, Occu. Business,
R/o. At Post Khandali, Tq. Ahmedpur,
Dist. Latur.
3. Ratan S/o Anantrao Sutrave,
Age : 43 years, Occu. Business,
R/o. Near Radhakrushna Mandir,
Behind Kalika Devi Mandir,
Old AUSA Road, Latur, Dist. Latur. ... Petitioners
(Orig. accused/applicants)

VERSUS

The State of Maharashtra ... Respondent

.....
Mr Vikram R. Dhorde, Advocate for the applicant
Mr S. M. Ganachari, APP for respondent/State
.....

CORAM : **N. W. SAMBRE, J.**
DATE : **25TH FEBRUARY, 2016.**

PER COURT:

. All the applicants herein are seeking pre-arrest bail in Crime No. 226 of 2015, registered at Shivaji Nagar Police Station, Latur, for the offences punishable under Sections 419, 420, 467, 468, 471 read with Section 120(B) of the Indian Penal Code.

2. It is claimed that the incident in question forms to be a basis for registration of offence which took place on 05.12.2015.

3. The prosecution case against the present applicants is that, one Sanjay Dattatraya Patil claimed to be the owner of plot No. 16 out of City Survey No. 3546 bearing House No. R 8/2/4 admeasuring 70 x 50 in the Latur municipal limits, lodged a complaint that, by impersonation the applicant namely; Rajesh has purchased the said property to which sale deed has also been registered. The applicants in Criminal Application No. 453 of 2016 are the witnesses to the said deed. The sale deed claims to have been registered in favour of the applicant Rajesh on 18.06.2010.

4. The seller Sanjay Dattatraya Patil, who has executed the said sale deed was not the real person by said name and identity but was some other different person.

5. While trying to make out a case for pre-arrest bail, Shri. Vikram Dhorde, the learned counsel for the applicants in both the applications would urge that the applicant Rajesh has purchased the property after same was introduced to him by one Shri. Kokate, owner of the Hotel, of which the applicant Rajesh was executing the renovation work. He would then urge that, another person who mediated in the said transaction was one Advocate Rai, who has expired and as such the person who impersonated was introduced to the applicant Rajesh were these two persons namely; Shri. Kokate and Advocate Rai. He would then urge that, of the total consideration, amount of Rs. 2.00 Lakhs was paid by demand draft and balance amount in cash. According to him, it is based on the documents disclosing the identity of the seller i.e. Sanjay Dattatraya Patil, the applicant upon satisfaction about the title and the identity, had purchased the property for valuable consideration. He has invited my attention to other documents such as mutation recorded in the Municipal Council, Latur in the name of applicant as on

24.06.2010 and the electricity connection issued in favour of the applicant Rajesh by Maharashtra State Electricity Distribution Company immediately after the purchase of the said property. He would then urge that the applicant Rajesh had also issued a notice prior to purchase and as such the property was purchased by him. The learned counsel would then urge that the delay of about five years in lodging the FIR is also not explained by the complainant.

6. The learned APP while opposing the application would urge that, the fact as regards impersonation is apparent as the complainant claims to be the owner of the property and holds a title to the property in question based on the registered sale deed in his favour executed on 12.07.1974. The learned APP then would urge that the custodial interrogation of the applicants is necessary so as to find out the person who impersonated the Sanjay Dattatraya Patil. According to him, the custodial interrogation is also necessary so as to find out the involvement of the other accused persons who abetted the crime in question.

7. The learned APP was assisted by the complainant through Advocate Shri. Deshmukh, who urge that the applications be rejected as

the custodial interrogation of the present applicants is necessary as the applicant Rajesh *prima facie* appears to have been involved in the crime in question. So as to substantiate his contention, he has placed reliance upon his title deed, the documents in support of his identity, the bank account and payment of major consideration in cash, the issuance of public notice in a newspaper which has hardly any circulation and without waiting till the completion of the notice period the execution of the said sale deed. He submits that the above referred chain of events speaks of criminal mind of the applicants.

8. I have perused the investigation papers. The investigation is going on in the matter, wherein one of the accused namely Kokate who has introduced the property as so called owner to the applicant, is informed to have been absconding.

9. In the above background, from the record it is required to be seen as to whether there was *prima facie* intention of the applicants to commit the crime in question. The important aspect of which this Court must take note of is an amount of Rs. 2.00 lakhs towards the part consideration of the property in question was paid by demand draft to the person who has executed the sale deed in favour of the applicant Rajesh. The said cheque payment was encashed by so called

impersonator by opening an account in a bank by playing fraud and has withdrawn the said consideration. Apart from above, it is also required to be noted that the applicant Rajesh has mutated the property in his name and also taken electricity connection in October 2010 itself and is continuously paying the taxes to the Municipal Body. The delay of about five years in lodging the FIR is not explained.

10. Apart from above, the fact remains that the offence includes the documents and the same are very much available and in the custody of the Investigating Officer.

11. In this background, the custodial interrogation of the applicant Rajesh, in my opinion, is no more required.

12. So far as applicants in Criminal Application No. 453 of 2015 are concerned, the said applicants are styled as witness to the sale deed executed in favour of applicant Rajesh sometime on 18.06.2010. The said applicants are witnesses to the execution of the said deed and cannot be termed to be aware about the identity of the seller or purchaser. At least no such law is brought to the notice of this Court which cast a duty on the witness to identify the persons to the Sale Deed.

13. Apart from above, both the applicants are very much available and cooperative to the Investigating Agency. Hence, in my opinion, their custodial interrogation is also not necessary.

14. For the reasons stated herein above, in my opinion, it will be appropriate to allow the present applications.

ORDER

- (I) Both the Criminal Applications being Criminal Application No. 6980 of 2015 and Criminal Application No. 453 of 2016 are allowed.
- (II) In the event of arrest of the applicants namely; Rajesh S/o. Murlidhar Kawale, Siddheshwar S/o Dagadappa Kshirsagar, Ramakant S/o. Shivajirao Shinde and Ratan S/o Anantrao Sutrave in Crime No. 226 of 2015, registered at Shivaji Nagar Police Station, Latur, for the offences punishable under Sections 419, 420, 467, 468, 471 read with Section 120(B) of the Indian Penal Code, they be released on bail on their furnishing P.R. bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand) each, with one surety in the like amount.

- (III) The applicants shall attend the concerned Police Station on 1st March to 3rd March, 2016 and thereafter as and when called by the Investigating Officer.

[N. W. SAMBRE]
JUDGE

sgp