

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

Criminal Application [APPP] No.541 of 2016
in
Criminal Application [ABA] No.256 of 2016

(Jahan Aara w/o Mohammad Zakir and others

vs.

The State of Maharashtra, through P.S.O. Nagpuri Gate, Amravati)

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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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Dr. A.H. Jamal, Advocate for the Applicants.
 Mrs. Mayuri Deshmukh, A.P.P. for the Non-Applicant/State.

CORAM : **S.B. SHUKRE, J.**

DATE : **8th JULY, 2016.**

Since the case-diary is available, there is no need to file the copy of F.I.R. Thus, the application is accordingly disposed of.

Criminal Application [ABA] No.256/2016:

Heard the learned Counsel for the applicants and the learned A.P.P. for the State.

The learned Counsel for the applicants has submitted that applicant No.1 is a woman, applicant No.2 is a senior citizen and, therefore, at least these two applicants deserve to be granted relief of anticipatory bail. He also submits that applicant Nos.2 and 3 have only acted as attesting witnesses in this case and, therefore, they have not played any material role in completing the transaction of sale of the disputed plot. He further submits that applicant No.1 is ready to co-operate

with the police and that since the disputed sale-deed has been seized, nothing further has remained to be enquired into by way of custodial interrogation. Therefore, he submits that the applicants be enlarged on anticipatory bail.

The learned A.P.P. for the State submits that this is a case, wherein one person posing himself as genuine Mohammad Farooque, appeared and executed a sale-deed in favour of applicant No.1 of the property belonging to the original person named Mohammad Farooque and later on it was discovered by the original Mohammad Farooque that somebody using his name and identity sold this property, which property had already been sold by him to two ladies namely Hamida Bano Mehnaz Parveen. She, therefore, submits that this is the case, which would require detailed investigation as well as custodial interrogation of the applicants.

It is seen from the case-diary that one person posing himself as Mohammad Farooque has executed the sale-deed of the property belonging to the original Mohammad Farooque in favour of applicant No.1 to which applicant Nos.2 and 3 stood as attesting witnesses. Although, it is stated by the learned Counsel for the applicants that applicant No.1 had made due enquiry before entering into the transaction of purchase of plot, I find from the record that at this stage, there is hardly any truth in the same. Applicant No.1 has parted with amount of Rs.1,75,000/-,

if one goes by the contents of the sale-deed and has directly got executed the sale-deed of the disputed plot in her favour, without there being any agreement of sale, which usually precedes any sale-deed of an immovable property. If a sale-deed is to be executed directly, ordinarily a vendee like applicant No.1 would pay such a huge amount only after making proper enquiry regarding the title being legal, valid, clear and transferable. It is the contention of applicant No.1 that enquiry in the municipal record as well as the city survey record was made and no mutation entries in favour of Hamida Bano or Mehnaz Parveen were found. However, there is no material available on record on the basis of which, such a submission could be accepted. Applicant No.1 in reality is a teacher by profession and presently working as a Principal of one college. But, she has chosen to show herself as a homemaker in the sale-deed of the disputed property. It is the defence of the applicant No.1 that Hamida Bano and Mehnaz Parveen had informed her that original Mohammad Farooque was interested in selling the disputed plot or in other words original Mohammad Farooque was referred to her by said two ladies. However, perusal of the statements of these two ladies discloses that this defence, at this stage, cannot be believed. These two ladies are pleading absolute ignorance in this regard. Rather, they have been maintaining that they were taken aback when they were informed by applicant No.1 that

she was the owner of the disputed plot. All these circumstances, at this stage, make me believe that there is something more than what meets the eye and there is also reason to believe that the imposter of Mohammad Farooque may have been set up by these applicants, as Hamida Bano and Mehnaz Parveen, the present legal owners of disputed plot, are saying that they never said to applicant No.1 that Mohammad Farooque was interested to sell it, a stand absolutely ironical to defence of applicant No.1 that these two ladies told her that said Mohammad Farooque wanted to sell the plot and that is why she believed that the person who approached her must be genuine Mohammad Farooque. Therefore, custodial interrogation of applicants or at least applicant No.1 and applicant No.3 would be required. Considering the age of applicant No.2, which is of about 82 years and this fact is not in dispute, I am of the view that his custodial interrogation, if any, may not be effective and so he can be given some concession by directing him to attend the police station and co-operate with the police in the investigation.

In the result, I am not inclined to grant and allow the application of respondent Nos.1 and 3 and the same stands rejected.

However, the application of applicant No.2- Azharullah Khan s/o Ibrahim Khan Pathan is allowed and it is directed that in the event of his arrest in Crime No.102/2016,

registered at Police Station Nagpuri Gate, Amravati against the applicant for the offences punishable under Sections 420, 465, 468, 471 read with Section 34 of the Indian Penal Code, this applicant No.2 shall be released on bail on his furnishing a P.R. Bond in the sum of Rs.25,000/- together with one solvent surety in the like sum on the conditions that he shall attend the police station everyday between 11:00 a.m. and 01:00 p.m. for a period of one week starting from 18th of July, 2016, shall also attend the police station on such further dates and time, as may be required, shall co-operate with the police in the investigation, and shall not tamper with the prosecution witnesses.

At this stage, the learned Counsel for applicant Nos.1 and 3 prays for keeping the effect of this order in abeyance for a period of eight weeks.

The learned A.P.P. has taken objection.

However, considering the fact that applicant Nos.1 and 3 have been granted interim protection by this court, the same can be continued for a period of two weeks by keeping the order of the court in abeyance.

Accordingly, it is directed that the order shall remain in abeyance for a period of two weeks and till that time, the interim protection granted by this Court shall continue.

JUDGE