

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

CRIMINAL APPLICATION NO. 66 OF 2015

(SANJAY BABURAO PATIL...VS..THE STATE OF MAHARASHTRA THR. PSO BUTIBORI & ANR.)
 WITH

CRIMINAL APPLICATION NO. 67 OF 2015

(SMT. JYOTI SANJAY PATIL...VS..THE STATE OF MAHARASHTRA THR. PSO BUTIBORI & ANR.)
 WITH

CRIMINAL APPLICATION NO. 68 OF 2015

(SMT. SAROJ GOWARDHAN NAGDEVE...VS..STATE OF MAHARASHTRA THR. PSO BUTIBORI & ANR.)
 WITH

CRIMINAL APPLICATION NO. 69 OF 2015

(SMT. SHUBHA SHARAD NAGDEVE...VS..STATE OF MAHARASHTRA THR. PSO BUTIBORI & ANR.)
 WITH

CRIMINAL APPLICATION NO. 70 OF 2015

(SMT. SUDHA SATYAWAN LANPALE...VS..STATE OF MAHARASHTRA THR. PSO BUTIBORI & ANR.)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : APRIL 25, 2016.

These five applications are disposed of by common order as the order passed by the learned Additional Sessions Judge against which the grievance is made by the applicants is same.

Heard Shri A.B. Moon, advocate for the applicants, Shri S.M. Bhagde, A.P.P. for the non-applicant/ State of Maharashtra and Shri J.M. Gandhi, advocate for the non-applicant No.2 in all the matters.

The applicants have approached this Court under Section 439(2) of the Code of Criminal Procedure praying that the order passed by the learned Additional Sessions Judge granting pre-arrest bail to the non-applicant No.2 be set aside and the pre-arrest bail granted to the non-applicant No.2 be cancelled.

The applicants filed complaints alleging that they have been cheated in the transaction in respect of the plots purchased by them. According to the applicants, they have purchased plots out of Khasra No.191 of Mouza : Bori, Tahsil and District : Nagpur and when they got knowledge that the plots in respect of which sale deeds are executed are not in existence they filed the complaints. According to the applicants, sale-deeds are executed in favour of Shri Sanjay Patil, Smt. Jyoti Patil and Smt. Sudha Lanpale and the sale-deeds are not executed in favour of Smt. Saroj and Smt. Shubha Nagdeve (all applicants). As the police had not undertaken investigation, the applicants had filed application under Section 156(3) of the Code of Criminal Procedure and the Court directed investigation pursuant to which the crime is registered for the offences punishable under Sections 420, 465, 467, 468 and 34 of the Indian Penal Code.

The non-applicant No.2 filed applications before the Sessions Court seeking pre-arrest bail which are allowed by the order dated 13th April, 2015. According to the applicants, the non-applicant No.2 has misled the Sessions Court by submitting that he is not concerned with Khasra No.35 of Mouza : Kirnapur and according to the applicants, relying on the misrepresentation made by the non-applicant No.2, the learned Sessions Judge has granted bail to the non-applicant No.2.

Shri J.M. Gandhi, learned advocate for the non-applicant No.2 has submitted that the alleged sale-deed is not executed by the applicant but is executed by one Saiduddin Rehan and the non-applicant has no concern with the transaction with the applicants. It is further submitted that

the sale-deed is executed in April, 1995 and the applicants have made grievance after a period of about 17 years. It is further submitted that the facts on record show that the dispute is of civil nature. It is argued that in any case, the applicants and the non-applicant No.1-State of Maharashtra have not been able to show that the custody of the non-applicant No.2 is required for further investigation. It is submitted that the non-applicant No.2 is granted pre-arrest bail by the order dated 13th April, 2015 and there is no complaint that the non-applicant No.2 has misused the liberty. It is prayed that the applications be dismissed.

After hearing the learned advocates for the respective parties and considering the material on record, I find that while passing order dated 13th April, 2015 granting pre-arrest bail to the non-applicant No.2, the learned Additional Sessions Judge has not properly appreciated the facts on record. The complaint of the applicants is about cheating in transaction in respect of the plots sold to them from Khasra No.191 of Mouza : Bori. The order dated 13th April, 2015 shows that the learned Additional Sessions Judge has considered the contention of the non-applicant No.2 that he is not concerned with Khasra No.35 of Mouza : Kiranapur. The confusion on the part of the learned Additional Sessions Judge in considering the facts while passing the order dated 13th April, 2015, makes the order passed by him unsustainable. In my view, the matter is required to be remitted to the learned Additional Sessions Judge for deciding the applications filed by the non-applicant No.2 afresh. As the matter is being remitted to the learned Additional Sessions Judge, I refrain myself from considering the arguments made on behalf of the respective parties.

Hence, the following order :

- i) The order passed by learned Additional Sessions Judge on 13th April, 2015 granting pre-arrest bail to the non-applicant No.2 in Crime Nos. M-2/2013, M-4/2013, M-1/2013, M-5/2013 and M-3/2013 is set aside.
- ii) The matter is remitted to the learned Ad-hoc District Judge-I and Additional Sessions Judge, Nagpur for deciding the applications filed by the non-applicant No.2 afresh.
- iii) The non-applicant No.2 and the representative of the non-applicant No.1 shall appear before the learned Ad-hoc District Judge-I and Additional Sessions Judge, Nagpur on 13th May, 2016 at 11.00 a.m.
- iv) As the order granting pre-arrest bail has been in force since 13th April, 2015, it is directed that till the applications filed by non-applicant No.2 are decided by the Sessions Court, the non-applicant No.2 shall not be arrested in the above referred crimes.

The applications are disposed of accordingly.

JUDGE