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

CRIMINAL APPLICATION NO. 1107 OF 2017

Abhay Umakant Bhangale,
Age: 18 years, Occu: Student,
R/o: Swapnil Building, Plot No. 118,
Gat No. 49, Ganesh Colony,
Jalgaon-425001

..APPLICANT

VERSUS

State of Maharashtra,
Through Jilla Peth Police Station,
Jalgaon, Dist. Jalgaon

..RESPONDENT

Mrs Rashmi S. Kulkarni, Advocate for applicant;
Mr K. N. Lokhande, Addl. Public Prosecutor for respondent

CORAM : N. W. SAMBRE, J.

DATE : 8th March, 2017

ORAL ORDER

Heard.

2. By the present application under Section 438 of the Code of Criminal Procedure, the applicant seeks his release on bail, in connection with C.R. No.177 of 2016, registered with Jilla Peth police station, Jalgaon, for offences punishable under Sections 384, 364, 395, 504, 506 read with Section 34 of the Indian Penal Code.

3. On 18th January, 2017, the applicant has withdrawn his earlier application for grant of pre-arrest bail and the present application for grant

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of pre-arrest bail is filed in view of following change in circumstances :-

- (a) The main accused Sharad Sapkale is already released by this Court on bail;
- (b) In the complaint case, being Criminal Misc. Application No.65 of 2017, at the behest of the present applicant, order under section 156 (3) of the Code of Criminal Procedure is passed in regard to the sale deeds bearing registration Nos.2079 of 2016, 2770 of 2016 and 2771 of 2016, which has direct bearing over the offence in question; and
- (c) Special Civil Suit No.11 of 2017 is instituted against the complainant by the present applicant for declaration that the aforesaid sale deeds are not binding and they are void, in which already *ex parte* injunction is ordered by the learned 5th Joint Civil Judge Senior Division, Jalgaon, in favour of the applicant.

4. While trying to make out a case for grant of pre-arrest bail, in addition to the above referred subsequent developments, would urge that the only role attributed to the present applicant is, that the other co-accused has carried out execution of the crime in question pursuant to the instructions of the applicant. She would then invite my attention to the unexplained delay in lodging the first information report and the likelihood of false implication of the applicant in the crime in question, in view of the

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alleged fraud practiced by the complainant on the applicant.

5. Learned Addl. Public Prosecutor opposed the application on the ground that there are eye-witnesses to the incident, who have claimed actual happening of the incident in question. According to him, the material collected during investigation speaks of *prima facie* involvement of the applicant.

6. It is not in dispute that complaint case, being Criminal Misc. Application No.65 of 2017 and Special Civil Suit No.11 of 2017 are initiated at the behest of the applicant against the complainant, in relation to immovable property. The offence as has been claimed in the first information report has also background of the dispute in relation to certain immovable property about which criminal complaint and civil suit, referred supra are initiated, in which interlocutory orders are already passed.

7. There are no attributions *qua* direct involvement of the applicant in executing the crime in question, but it is claimed that he has acted behind curtain for execution of the crime in question.

8. In the above backdrop, false implication of the applicant cannot be ruled out.

9. There is also unexplained delay in lodging the first information report, which is required to be taken note of.

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10. The co-accused Sharad Sapkale is already ordered to be released on bail by this Court.

11. In the aforesaid background, in my opinion, a case for grant of pre-arrest bail is made out, particularly in the backdrop of the fact that there exists civil dispute, even though initiated subsequent to the filing of the complaint. The conduct of the complainant is also required to be appreciated, particularly in the backdrop of the order under Section 156 (3) of the Code of Criminal Procedure and that of *ad interim* injunction ordered in the aforesaid civil suit against the complainant, at the behest of the applicant.

12. In view thereof, I pass following order :-

In the event of arrest of the applicant, in connection with C.R. No.177 of 2016, registered with Jilla Peth police station, Jalgaon, for offences punishable under Sections 384, 364, 395, 504, 506 read with Section 34 of the Indian Penal Code, he be released on bail, on furnishing P.R. Bond of Rs.25,000/- with one or two sureties for the like amount.

The applicant shall attend the Investigating Officer on 21st and 22nd March, 2017, between 10.00 a.m. and 12 noon and thereafter as and when called.

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The applicant shall not take any steps to influence the prosecution witnesses or tamper with evidence.

Criminal Application stands allowed in above terms.

(N. W. SAMBRE, J.)

amj