

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 24 OF 2017

1. Amol Suresh Kulkarni
2. Sanjay Manohar Gural

...Applicants
(Orgi. Accused)

Versus

The State of Maharashtra & Anr.

...Respondents

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Mr.Viresh V. Purwant for the Applicants.
Mr.S.S.Hulke, APP for the State/Respondent.
Mr.Prashant S. Hagare for the original Complainant.
Mr.S.G.Thorat, PSI, Karmala Police Station (present)

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CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 16th January 2017

P.C.:

1. The applicants /accused are prosecuted under sections 406, 420 r/w 34 of the Indian Penal Code, as the offence is registered against them vide C.R. No. 626 of 2016 with Karmala Police Station, Solapur.

2. Complainant Radhika R. Kulkarni gave information to the police on 7th December 2016 that after the death of her father on 8th September 2014, she has received land admeasuring 19 hectares 12 ares of Gat No. 281/2/A from her father Shridhar V.

Kulkarni, and by mutation Entry No. 3539, her name was entered in respect of the said land as a land owner.

3. In the year 2015, she wanted to sell the said land, as she was in financial need. She asked her cousin brother Amol S. Kulkarni, who is the present applicant/ accused no. 1 Amol S.Kulkarni. Within a few days he informed her that he alongwith another person Sanjay M. Gotal, who is an agent, sold the land and therefore, he called her at Karmala for execution of sale deed on 30th September 2015 at the office of the Tehsildar, Karmala. However, she did not have any talk with the purchaser and the sale deed could not be executed on that day, but the applicants/ accused handed over Rs. 4 lacs by cash to her nephew Pramod Vilas Kulkarni towards the land transaction. However, she was kept in dark about total consideration of the land. Again, she was called on 5th October 2015 at Karmala and she executed the sale deed in favour of one Shivaji W. Jadhav. She was not aware about the contents of the sale deed, as the applicants/ accused did not tell her. Eight to ten days thereafter, the purchaser Shivaji W. Jadhav approached her to take her signature on some entry and after talking with her, she found that the land was sold for Rs. 35

lacs. Out of that, Shivaji W. Jadhav had paid Rs. 20 lacs to her cousin applicant/ accused- Amol Kulkarni.

4. The learned counsel for the applicants-accused has submitted that the applicants/accused have not committed any offence. The facts are twisted by the complainant, who is in fact not an owner of the land, which is claimed by Shivaji Waman Jadhav. He submitted that there was no transaction between Shivaji Waman Jadhav and Rekha Kulkarni. In order to substantiate the arguments, he heavily relied on the order passed by the Civil Judge, Junior Division at Karmala under Exhibit -5 in Regular Civil Suit No. 71 of 2016. He submitted that in the said order by rejecting the application of Shivaji Waman Jadhav for injunction, the Civil Court has observed that the documents filed by the applicants/accused and the search reports show that Rekha R. Kulkarni was not having any right to sell the suit land. The Judge has also observed that the suit land i.e. Gat No. 281 was earlier sold by Shridhar, Amrut and Balkrishna and, therefore, no land was left with Rekha R. Kulkarni in Gat No. 281. The learned counsel submitted that Rakha R. Kulkarni did not have any land to sell, and the entire transaction had collapsed. There are no charges against

the applicants/accused of cheating and forgery. They are entitled to pre-arrest bail.

5. The learned prosecutor opposed the application and he relied on the search report dated 6th June 2013 submitted by Advocate B.T. Devi addressed to one Pramod Vilas Kulkarni. He pointed out that at the relevant time he relied upon paragraph no. 12 of the said search report, which stated that the applicant Sridhar Vishwanath Kulkarni i.e. the father of Rekha R.Kulkarni purchased land admeasuring about 2 hectares and 85 ares and had got a perfect, valid, absolute, clear and marketable title and land admeasuring 5 hectares and 71 ares out of Gat No. 281/2/A is jointly with his brother Amrit Vishwanath Kulkarni. He submitted that the applicants/accused have cheated by accepting the entire amount of sale deed and gave only Rs. 4,02,000/- and hence their custody is required to recover the said amount.

6. Perused the F.I.R. and sale deed dated 14th August 2008 between Amol Kulkarni and Shridhar V. Kulkarni, which shows that earlier the father of Rekha Kulkarni had sold some portion of land to the applicants-accused. It apparently shows the reason for Rekha Kulkarni to rely on him. Also, perused the sale deed dated

5th October 2015 between Shivaji W. Jadhav and others, wherein the amount of Rs. 14,50,000/- is mentioned as an amount of consideration.

7. Perused the 7/12 extracts, which shows the name of Rekha R.Kulkarni. In the F.I.R., Rekha R.Kulkarni has stated that she has only Rs. 4 lacs and remaining amount was taken by her cousin the applicant-accused -Amol Kulkarni from Shivaji W.Jadhav, and it was accepted by Shivaji W. Jadhav to give her, but in fact it was not given to her.

8. Perused the order dated 4th July 2016 passed by the 11th Joint Civil Judge Junior Division, Karmala under Exhibit-5. The Civil Suit is filed for an injunction by Shivaji W. Jadhav against some other persons. In the said suit Rekha Kulkarni was not a party. Similarly, in the present application, Shivaji W. Jadhav is not a party, and therefore, Rekha Kulkarni had no opportunity to put her case before the said learned Judge. Assuming Rekha Kulkarni did not have any right to sell the property, yet, it is a different issue. The fact that whether the applicants/accused, by taking advantage of the trust reposed in them by Rekha Kulkarni, had

accepted money as alleged by Shivaji Jadhav and did not give it to Rekha Kulkarni is a relevant material.

9. Perused the statement of Shivaji W. Jadhav, who has specifically mentioned that he has paid Rs. 35 lacs to the applicants-accused as the consideration of the land to be paid to the landlady. This *prima facie* shows that the applicants/accused have accepted the amount under the pretext to be given to the landlady. However, they did not give her the amount. Thus, there is an element of cheating and criminal breach of trust in the entire transaction. Hence, their custody is required.

10. Considering these facts, I am of the view that the findings given in the order has no bearing over the transaction which took place between the applicants/accused and Shivaji W. Jadhav. Hence, applicant-accused no. 2 Sanjay Manohar Gutal has acted as the middleman and agent, and hence it is rejected.

11. Therefore, Anticipatory Bail Application is rejected.

(MRIDULA BHATKAR, J.)