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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.443 OF 2019

Pradip Kisanrao Hagwane ..Applicant.

V/s.

The State of Maharashtra ..Respondent.

Mr.S.P.Thorat i/b. S.D.Palsande for the applicant

Smt.J.S. Lohokare, APP for the respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 20, 2019

P.C.:-

Heard learned counsel for the applicant and learned APP for the State.

2. In crime No.148/2016 for offence punishable under sections 420 read with 120B of the Indian Penal Code registered with Hadapsar police station, Pune, the applicant is seeking pre-arrest bail, which was registered pursuant to a complaint case filed by the complainant and order passed therein pursuant to the provisions of section 156(3) of the Criminal Procedure Code.

3. The case of the prosecution is, the applicant executed a irrevocable power of attorney on October 3, 2002 in favour of Nandkishore i.e. his real brother, who in turn entered into an agreement for sale with the complainant by accepting certain consideration on March 7, 2014.

4. Since the agreement of sale was not honoured after the receipt of part consideration, complaint case came to be filed alleging that the brother of the complainant has not honoured the agreement and cheated him. As such, committed an offence punishable under sections 420 and 120B of the Indian Penal Code.

5. The submissions are, after the execution of the irrevocable power of attorney on October 3, 2002, the applicant has neither played any role nor the beneficiary in the amount of consideration. According to him, the applicant did not negotiate with the complainant or any other person, as could be inferred from the complaint case.

6. *Per contra*, learned APP opposed the claim on the ground that custodial interrogation of the applicant is required for recovery of the amount.

7. Considered rival submissions.

8. After the execution of the registered irrevocable power of attorney in favour of co-accused Nandkishore, who happened to be the real brother of the applicant, said Nandkishore has entered into an agreement of sale with the complainant on March 7, 2014. From the recitals of the said agreement, it could be inferred that the brother of the applicant has received part consideration. As far as the complaint under section 156(3) of the Criminal Procedure Code is concerned, but for the reference to the extent of co-owner of the property and execution of power of attorney, there is no specific role attributed to the applicant in the commission of offence.

9. It cannot be borne out from the investigation carried out till date that the applicant is the beneficiary out of the part consideration received by his brother Nandkishore, who is a co-accused.

10. That being so, in my opinion, a case for grant of pre-arrest bail is made out. Hence the order :-

i) In the event of arrest in Crime No.148/2016 for offence punishable under sections 420 read with 120B of the Indian Penal Code registered with Hadapsar police station, Pune,

the applicant be released on bail on his furnishing P.R. bond of Rs.25,000/- with one or more sureties in the like amount;

- ii) The applicant shall attend the Investigating officer as and when directed and to provide contact number and other details within three days from today to the investigation officer;
- iii) The applicant shall not influence the prosecution witnesses or tamper with the evidence;
- iv) The applicant shall co-operate with the investigating agency;
- v) The application stands disposed of accordingly.

(NITIN W. SAMBRE, J.)