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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.393 OF 2019

1. Parag Tanaji Chavhan,
2. Bhanudas Jagannath Borade ..Applicants.
V/s.
The State of Maharashtra ..Respondent.

Mr.Sachin S.Punde for the applicants.

Mr.N.B.Patil, APP for the respondent-State.

ANTICIPATORY BAIL APPLICATION NO.394 OF 2019

- Nitin Jagannath Borade ..Applicant.
V/s.
The State of Maharashtra ..Respondent.

Mr.Onkar V.Warange for the applicant.

Mr.S.H.Yadav, APP for the respondent-State.

ANTICIPATORY BAIL APPLICATION NO.395 OF 2019

1. Deepak Dattatraya Shinde,
2. Nitin Chintaman Abhale ..Applicants.
V/s.
The State of Maharashtra ..Respondent.

Mr.Anand S.Kulkarni for the applicants.

Ms.S.S,Kaushik, APP for the respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 13, 2019

P.C.:-

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

2. The applicants in all these three applications are seeking pre-arrest bail in crime No.3/2019 for offence punishable under sections 419, 420, 465, 468, 471 read with 34 of the Indian Penal Code registered with Neral police station, District Raigad.

3. The prosecution case is, the complainant William and one Simon Lobo are real brothers and since July 6, 2008 Simon Lobo went missing.

4. Land bearing Survey No.69, Hissa No.2 located at mouze Dhamote, Taluka Karjat, District Raigad was earlier owned by one Raut family and some time in 1970 the same was purchased and is owned Simon Lobo, brother of the complainant. It is the case of the complainant that impersonating Simon Lobo, the applicants in Anticipatory Bail Application No.393 of 2019 got sale deed executed by impersonation whereas, the applicant in Anticipatory Bail Application No.394 of 2019 acted as a mediator

who also happened to be the brother of applicant No.2 in Anticipatory Bail Application No.393 of 2019, who is the purchaser of the property. Whereas the applicants in Anticipatory Bail Application No.395 of 2019 are witnesses to the execution of sale deed.

5. From record, it appears that the applicants-purchaser got executed the registered power of attorney in their favour on May 25, 2018 by impersonating Simon Lobo and got the sale deed executed through the said registered power of attorney. The sum and substance of the allegations in the complaint are, the applicant purchaser by impersonation got the power of attorney registered in their favour, received consideration for the land in question from their own pockets for themselves and executed registered sale deed in their own favour.

6. Learned counsel for the applicants-purchaser would urged that the sale deed and the power of attorney are in fact executed by Simon Lobo and part consideration is also paid. According to him, though the land in question is sold at much lower price than the market rate, it was a distress sale as the erstwhile owner Raut is still litigating for the land in question. A

further submission is, of having parted with the consideration, it could be ascertained that the seller Simon Lobo is very much alive and executed the power of attorney.

7. The next limb of submission of learned counsel for the applicants is, the entire offence as has been alleged, is based on documents which are very much available to the investigating agency and as such, custodial interrogation is not warranted.

8. So far as submission of the applicants in Anticipatory Bail Application No.395 of 2019 is concerned, in addition to above submission, it is claimed that there is no role attributed to the applicants in the transaction in question as, the applicants have neither received any booty out of the amount of consideration nor signed the documents. According to him, the transaction of the applicant-purchaser *inter se* cannot form to be the basis to infer involvement of all the applicants in the crime in question.

9. The applicants in Anticipatory Bail Application No.395 of 2019 would submit that the only role attributed to them is acting as witnesses. The contents of the sale deed, execution of power of attorney, etc. cannot be attributed to the applicants as they were mere witnesses to the execution and not to the identity

of the parties to the deeds or the contents. As such, the applicants submit that they are innocent and their custodial interrogation is not warranted. As such, they be granted pre-arrest bail.

10. Learned APP while opposing the prayer for pre-arrest bail would urge that the investigation carried out till date does not support the case of the applicants that Simon Lobo is alleged to have executed the power of attorney for the sale of the disputed property. The further contention is, neither the applicants-purchaser have parted with the consideration under distress sale nor the original documents viz. Power of attorney and sale deed executed with the person by name Simon Lobo, who is alleged to have executed the same, are produced before the investigating agency. His submissions are, custodial interrogation is very much warranted so as to look into the matter as to the mode and manner, including the whereabouts of other accused who are involved in the commission of offence.

11. Having appreciated the submissions, what is noticed is non availability of the alleged power of attorney holder Simon Lobo could be inferred from the investigation carried out till date. This Court as such could primarily believe that the power of

attorney executed in favour of the applicants-purchaser, that too when the applicant Nitin Borade is involved in completing the procedure of the revenue entries, etc., is to the benefit of all these three applicants. Even though the account depicts parting of certain amount of consideration, still, the theory put forth by the applicants as that of distress sale cannot be believed, particularly when no convincing explanation is coming forward for the alleged execution of the power of attorney, when the first seller claim to have been very much in existence.

12. Taking disadvantage of the power of attorney, the applicants-purchaser are shown to have parted with the consideration to their own accounts and become owner of the property. The entire transaction is suspicious and the applicants being the beneficiaries thereunder could be inferred to be involved in the crime in question.

13. The applicant Nitin Borade appears to have in calculated manner carried out necessary revenue changes and instead of being direct beneficiary in the sale deed, appears to have got the same executed in favour of his brother, who is one of the purchaser.

14. So far as the applicants in Anticipatory Bail Application No.395 of 2019 who are shown to be witnesses to the documents is concerned, it could only be observed that both of them appear to be a party to the alleged privity of execution of the power of attorney and the sale deed by the accused in their own favour. These applicants-witnesses identified the purchasers and seller, as could be inferred at this stage of the crime, to be the part of the syndicate who have in a calculated manner committed the crime in question. That being so, having noticed that all the accused are very much involved in the crime in question, I hardly see any reason to grant protection as prayed for. All the applications as such fail and are rejected.

(NITIN W. SAMBRE, J.)