IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.780 OF 2020

Sushil S/o Murlidhar Biyani,
Age : 44 years, Occ: Advocate,
R/o : Behind Yasho Mangal Karyalaya,
Osmanpura, Aurangabad. **... Applicant**

VERSUS

The State of Maharashtra,
P. S.O., P.S. Gangapur,
Dist. Aurangabad. **... Non Applicant**

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Advocate for Applicant : Mr. R.S. Deshmukh, Senior Advocate a/w Mr. R.A. Jaiswal
APP for Respondent/State: Mr. V.M. Kagne

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CORAM : MANGESH S. PATIL, J.

DATE : 27.11.2020

PER COURT :

In this application under Section 438 of the Code of Criminal Procedure, the applicant is seeking bail in the event of his arrest in connection with Crime No.42/2020 registered with Gangapur Police Station for the offences punishable under Section 420, 465, 466, 467, 468, 471, 474, 120-B read with Section 34 of the Indian Penal Code and Section 82 (C) and Section 82 (D) of the Registration Act, 1908.

2. To put it in nutshell after going through the FIR and the papers of the investigation, the allegations are to the effect that by hatching a

conspiracy, impersonating the owner of the land by name Baburao Dattu Lahane and falsely identifying accused Rajendra Mahendrasingh Chandel to be the owner the former's land was sought to be transferred by executing registered sale deeds on 13.03.2019 and 29.05.2019. It is also alleged that even a bogus and false release deed was executed in similar fashion on 03.08.2019 whereby the charge of a Co-operative Bank on the land was withdrawn benefiting accused Nazarkar by similarly posing accused Chandel to be Baburao Dattu Lahane and an Officer of the Bank. Thus it is alleged that all the accused have committed an offence of forgery and cheating.

3. The learned Senior advocate Mr. Deshmukh for the applicant submits that in fact, the applicant is the victim and the fraud has been practised upon him by the prime accused Nazarkar. The applicant has *bona fide* believed in Nazarkar, paid consideration by issuing cheque in the name of owner Baburao Lahane and got the Sale Deed executed on 29.05.2019. He had also taken a precaution to publish a notice in a daily calling upon objections from public at large before purchasing the land. He had also lodged a complaint after coming to know about such fraud addressed to the concerned Police Officer of Vedant Nagar Police Station as well as the Superintendent of Police dated 09.08.2020.

4. Since the applicant was being treated as a family member of the accused Nazarkar, he was acting *bona fide* and has purchased the land for a valuable consideration since Nazarkar had deceived him to enter into the transaction. But for such deception he would not have purchased the land

by parting huge money.

5. The learned Senior advocate would point out that in fact one Damodhar Hivle was original owner. Since he was in need of money he had approached Nazarkar who paid him money but by getting a sale deed of very same land executed in the name of Baburao Lahane. Baburao Lahane after coming to know about such a fraud filed a complaint with Silegaon Police Station on 24.01.2020 and Damodhar Hivle also filed a Special Civil Suit No.10/2020 and both of them opposed the Bail Application preferred by Nazarkar by filing a Written Statement but in the suit Hivle did not claim any involvement of the applicant in the crime.

6. The learned Senior advocate by referring to the remand papers filed by the then Investigating Officer before the Magistrate from time to time would point out that in the initial remand reports filed on 02.02.2020 the Investigating Officer had not claimed involvement of the applicant in any manner. He also referred to the role of co-accused Rajkumar Chandel and one Dhanraj Deshmukh but neither of them had divulged involvement of the applicant. Till 11.08.2020 the Investigating Officer never claimed involvement of the applicant in commission of the crime in any manner. Till then it was his stand that Mr. Nazarkar was the mastermind who had fabricated the documents taking help of accused Dhanraj Deshmukh and had made Rajkumar Chandel to impersonate Baburao Lahane. It was his stand till then that the purchasers, one Mr. Andhale under the first sale deed and the applicant under the Second sale deed, were cheated.

7. The learned Senior advocate would then point out that the applicant was perceiving that the then Investigating Officer was not conducting investigation in a fair manner and had allowed the prime accused Nazarkar to be released. Therefore he had addressed a letter to the Superintendent of Police to change the Investigating Officer. After coming to know about such allegations levelled against him by the applicant, with an ulterior motive to falsely implicate him the Investigating Officer in connivance with his superiors started fabricating documents and material to somehow rope in the applicant. While submitting the remand reports on 12.08.2020 and 13.08.2020, for the first time, the Investigating Officer attributed him with a role in commission of the crime. He arrested Mr. Pakhe who is one of the attesting witnesses on the second sale deed executed in favour of the applicant. He specifically mentioned in the remand report dated 12.08.2020 about this accused Pakhe having disclosed that he and the other attesting witness Sanket Palnitkar were in fact prompted by the applicant to work as a attesting witnesses. The I.O. was annoyed by the protest lodged by the applicant with the Superintendent of Police regarding improper investigation and has falsely involved him.

8. The learned Senior advocate would then submit that the Investigating Officer for the conspicuous reasons has been changing the stands from time to time. The present Investigating Officer who is Deputy Superintendent of Police, Gangapur, Sandip Raghunath Gavit has filed affidavit (Page 159) opposing the Application for anticipatory bail. Even

there is an inconsistency in the stand taken by the present Investigating Officer in this affidavit and the latest instructions on the basis of which the learned prosecutor is making the submissions. All these circumstances clearly indicate that the Investigating Officer with an ulterior view to implicate the applicant is resorting to falsehood. Now even he is being attributed with having helped Nazarkar in similarly getting the 3rd document i.e. the release deed executed by resorting to impersonation which was never the stand of the Investigating Officer at earlier point of time. The learned Senior advocate would submit that in fact on 03.08.2019 the applicant was at Akola and could not have played any role in its execution.

9. Lastly, the learned Senior advocate submits that the applicant is a practising advocate and is unlikely to jump the bail. He would be put to disrepute if he is allowed to be arrested without assurance of bail. Following the golden rules laid down by the Supreme Court in the case of **Siddharam Satlingappa Mehetre Vs. State of Maharashtra and Ors; (2011) 1 Supreme Court Cases 694,** even if there is a an inkling of false implication a person is entitled to anticipatory bail. Considering the modus sought to be attributed, custodial interrogation of the applicant is not necessary and he may be granted anticipatory bail.

10. The learned APP strongly opposes the Application. He submits that it is a clear case of cheating by impersonation practised upon the informant who is the Sub-registrar in the office where the documents were registered. There is enough material to reveal involvement of the applicant

in commission of the crime. He would point out that it is only after prime accused Nazarkar was arrested that the applicant made a grievance by sending correspondence to the concerned Investigating Officer and the Superintendent of Police. He would then submit that the applicant is an advocate and had himself taken the two attesting witnesses who are the law students to act as attesting witnesses in his car. There is no reason why at this juncture their version is to be disbelieved. They have specifically divulged that it was at the request of the applicant that they had accompanied him to the office of the Sub-registrar and have acted as attesting witnesses at his instance.

11. The learned APP would then submit that it is only during the course of investigation as the circumstances revealed as also the co-accused disclosed that it has now transpired that the applicant has enabled prime accused Nazarkar and Chandel to open an account with T.J.S.B. Sahakari Bank posing Chandel to be Baburao Lahane and the cheque issued by the applicant in favour of Baburao Lahane was got encashed through that account. On instructions the learned APP further points out that the handwriting on the account opening form is that of the applicant. Thus according to the learned APP, the offence is serious and has been accomplished by hatching a conspiracy. The Investigating Officer is entitled to carry out the investigation even by resorting to custodial interrogation of the applicant and the application be rejected.

12. I have carefully gone through the papers of the investigation.

Suffice to observe at the inception that at this juncture there is enough material to *prima facie* infer that it is indeed a case of forgery and cheating by impersonation. In place of the original owner Baburao Lahane accused Chandel was presented and the sale deeds as well as the release deed have been got executed.

13. The only question that needs to be answered is as to if the material on the record is sufficient enough to *prima facie* reveal complicity of applicant in commission of the crime. As is rightly pointed out by the learned Senior advocate Mr. Deshmukh for the applicant, during the initial remand reports submitted by the Investigating Officer after arrest of co-accused Rajkumar Chandel and Dhanraj Deshmukh he had specifically mentioned that there was no role played by the applicant and the applicant and the other purchaser were also the victims of the fraud. It is also a matter of record that however during subsequent remand reports particularly one after arrest of one of the attesting witnesses on the sale deed executed in favour of the applicant, namely Abhijit Pakhe while submitting the remand report dated 12.08.2020 that for the first time the applicant was sought to be implicated on the basis of the disclosures made by Abhijit Pakhe.

14. The whole emphasis by the learned senior advocate is on the fact that once the Investigating Officer having concluded while submitting a remand report dated 02.02.2020 that there was no involvement of the applicant there was no reason and the Investigating Officer was not entitled

to switch over his stand. The learned Senior advocate therefore strenuously attempted to point out as to how only after the applicant made a grievance with the superior of the Investigating Officer regarding the manner of investigation being carried out by him that Investigating Officer has made every attempt to somehow implicate the applicant. Though at the first blush the submission of the learned Senior advocate appears to be attractive, one needs to bear in mind that it is a matter of investigation of a crime involving several persons. The Investigating Officer has to start from a scratch. He has to proceed with the investigation with an open mind keeping all the options open. It is only on the basis of the progress being made in the investigation that gradually he is expected to arrive at a final conclusion before submitting a report under Section 173 of the Code of Criminal Procedure. It is not expected that he should form an opinion at the initial stage and would be bound by it irrespective of what transpires during further investigation. He has to proceed step by step and in the process if comes across some material involving some other offenders and even some other crime he is entitled to change his stand suitably. This is what precisely seems to have happened in the matter in hand.

15. Since the applicant is shown to be a purchaser under the second sale deed, it was but natural for the Investigating Officer to begin with an inference that he could be innocent and may be a victim of the fraud. It is only after he arrested one of the attesting witnesses accused Mr. Pakhe that he perhaps had to change his stance according to the disclosures made by

Pakhe. This is what has been precisely mentioned by the Investigating Officer while submitting the remand report dated 12.08.2020. He has specifically mentioned that it was Pakhe who divulged that he and the other attesting witness Palniktkar are friends. Palnitkar was a family friend of the applicant and at the instance of the applicant they had accompanied him in his car and acted as attesting witnesses and identified accused Chandel at the time of execution of the sale deed in favour of the applicant. It is thus quite clear that the Investigating Officer was required to change the stand only after accused Pakhe was arrested and if that is so no fault can be found with the investigation.

16. Similarly, though initially there was no material before the Investigating Officer to implicate the applicant during the course of the investigation he has recovered the documents from T.J.S.B. Sahakari Bank and according to him posing Chandel to be Baburao Lahane an account was opened with that Bank and the applicant had also played role therein by filling the account opening form in his handwriting. If such is the state of affairs, the applicant cannot be allowed to make capital of such change in the stand of the Investigating Officer from time to time as far as role attributed to him in commission of the crime.

17. In this respect it is also pertinent to note that a grievance was made by the applicant with the Investigating Officer and Superintendent of Police by his correspondence dated 09.08.2020 alleging that even he was a victim of the fraud committed by accused Nazarkar. Conspicuously in this

complaint in the last few sentences of paragraph No.1 he specifically mentioned that the attesting witnesses Sanket Palnitkar and Abhijit Pakhe were the law students who had accompanied him at the time of sale deeds and acted as attesting witnesses and they were not knowing that the person posing to be Baburao Lahane was not Baburao Lahane in fact. Meaning thereby that these two attesting witnesses had accompanied the applicant and had acted as attesting witnesses at his request. In this complaint he has also vouched for innocence of both these attesting witnesses as well. If such is the state of affairs, it indeed is a material circumstance which justifies the inference being drawn by the Investigating Officer that even the applicant is involved in hatching conspiracy and commission of the crime.

18. Considering the enormity of the crime, the *modus operandi* and involvement of several accused, custodial interrogation of the applicant is indeed imperative. The principles laid down in the case of Siddharam Mehetre (supra) will not come to the aid of the applicant in the peculiar facts and circumstances discussed herein above.

19. The application is rejected.

20. At this juncture the learned Senior advocate points out that the applicant is a practising advocate and has been enjoying interim protection since 29.09.2020 and the protection may be continued for a reasonable time to enable the applicant to approach the Supreme Court. Since it is a matter of investigation into a serious crime coupled with the facts and circumstances discussed herein above, in my considered view when the

request for anticipatory bail itself is being refused on merits, the protection cannot be extended any further. The request of the learned Senior advocate is rejected.

(MANGESH S. PATIL, J.)

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