

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LDVC CRI ABA NO. 689/2020

Samadhan Shankar Wagh .vs. State of Maharashtra through PSO P.S.
Khamgaon City, Tq. Khamgaon, Dist. Buldhana.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S. V. Sirpurkar, Advocate for applicant.
Mr. V. P. Maldhure, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : AUGUST 18, 2020

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

Heard Mr. Sirpurkar, learned counsel for applicant and Mr. Maldhure, learned A.P.P. for non applicant-State. Also perused reply and additional affidavit of the investigating officer dated 11.08.2020.

The applicant is apprehending his arrest in connection with Crime No. 11/2020, registered with Police Station, Khamgaon City, Buldhana for an offence punishable under Sections 409, 420, 468 and 471 of the Indian Penal Code (IPC).

It is submission of the learned counsel for the applicant that name of applicant neither figures in the first information report nor in the charge-sheet. It is stated that the investigating officer has filed charge-sheet however it is not filed under Section 299 of the Code of Criminal Procedure against the applicant.

He further submits that this Court (Coram: P. V. Ganediwala, J.) on 10.07.2020, granted ad interim anticipatory bail in favour of the applicant. While granting ad interim bail, it was directed that applicant shall cooperate with investigating officer as and when called. He submits that as on today, at no point of time, investigating officer has called applicant for interrogation or investigation. He, therefore, submits that the application be allowed.

Per contra, learned A.P.P. would submit that the applicant is one of the beneficiaries of the crime. He further submits that as per the additional affidavit, it was found that the applicant has sub divided the plot in question and sold it to two other persons and therefore to investigate into the matter, custodial presence of the applicant is necessary.

The FIR, on the basis of which crime was registered was lodged by Suryakant Satpute, who is circle officer. The report is dated 09.01.2020. The report was lodged against Rajesh Dnyandeo Chopde, Talathi of Khamgaon Division No.1, Deshmukh Plot, Civil Lines, Khamgaon. Gist of FIR is that said Talathi fraudulently entered the names of various persons in the land record. Learned A.P.P. would submit that said Talathi is already arrested on 06.02.2020 and as on today, he is in jail. Perusal of the charge-sheet would show that name of the applicant is not there in the entire charge-sheet. Further, charge-sheet under Section 299 of the Code of Criminal Procedure is also not filed against the present applicant. Of course, the investigating officer has reserved the right for filing the additional charge-sheet as and when required.

However, the fact is well crystallized that as on today, name of the applicant is not figuring either in the FIR or in the entire charge-sheet. According to the prosecution, the applicant is one of the beneficiaries inasmuch as his name is mutated as an owner of land having plot no. 44, situated on agricultural land no. 121/1 at Khamgaon. According to the additional affidavit, the applicant has sub divided the plot no. 44 into 44-A and 44-B and sold the said plots to two other persons.

The applicant was protected by this Court by earlier order. While doing so, applicant was directed to join investigation as and when called by investigating officer. Learned A.P.P.would submit that till today, the investigating officer did not call the applicant for any investigation.

Since, name of the applicant is not figuring either in the FIR or in the charge-sheet and when no charge-sheet is filed showing the applicant as an absconder and in spite of the opportunity, the investigating officer, till today has not called the applicant directing him to join the investigation, in my view, the applicant deserves the relief of pre arrest bail. However, at the same time, interest of the prosecution can also be protected. That leads me to pass the following order.

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest connection with Crime No. 11/2020, registered with Police Station, Khamgaon City, Buldhana for an offence punishable under Sections 409, 420, 468 and 471 of the Indian Penal Code Applicant-Samadhan Shankar Wagh be released on bail on he

executing P.R. Bond in the sum of Rs.15,000/- with one solvent surety in the like amount.

(ii) Applicant is directed to attend Police Station, Khamgaon City on every Monday and Wednesday from 24.08.2020 for next two months and shall be with the investigating officer from 03.00 p.m. to 05.00 p.m. The applicant shall also maintain a diary to that effect.

(iii) If the applicant violates this condition and does not attend the Police Station for any two dates, it shall be open for the investigating officer to file an application for cancellation of the bail granted today in favour of the applicant.

The application is disposed of.

The order be communicated to the counsel appearing for the parties either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

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Yogesh
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Date:
2020.08.18
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