

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

CRIMINAL APPLICATION (ABA) NO. 603 OF 2020

(Mithun s/o Pradeep Kate ..vs.. State of Maharashtra, through its PSO, PS Beltarodi, Nagpur)

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

Court's or Judge's orders

Mr. S.G. Joshi, Counsel for the applicant,
Mr. J.Y. Ghurde, Addl.P.P. for the non-applicant.

CORAM : ROHIT B. DEO, J.

DATED : 21-10-2020

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

2. I have heard Mr. S.G. Joshi, the learned Counsel for the applicant-accused, Mr. J.Y. Ghurde, the learned Additional Public Prosecutor for the State and Mr. A.C. Jaltare, learned Counsel for the complainant.

3. At the very outset, it must be recorded, that after I indicated disinclination to entertain the application and was about to dictate the order of rejection, Mr. S.G. Joshi sought withdrawal of the application. The request for withdrawal is, therefore, rejected.

4. Adverting to the merits of the application, I am more than satisfied that there is ample material on record to link the applicant with the alleged crime and

that there is no room for exercising discretion.

5. The allegation against the applicant is that he entered into as many as four agreements with the members of the complainant's family, to sell six plots for a consideration of Rs.1,48,00,000/- (Rupees One Crore Forty Eight Lakhs only). Pursuant to the said agreements, amount of Rs.80,60,400/- (Rupees Eighty Lakhs Sixty Thousand Four Hundred) was paid to the applicant between February, 2016 and July 2016. In October, 2016, the accused represented to the complainant's family that due to certain legal issues, he would not be in a position to sell the six plots and offered to sell a different plot situated at Mouza-Pipla. The applicant gained the confidence of the complainant's family by admitting the amount received and executing a MOU.

The allegation is that right from the inception, the applicant has no intention of selling the plots. The agreements and MOU referred to supra were followed by another agreement in respect of land situated at Mouza-Pipla and the applicant promised to execute the sale-deed on or before 11-05-2018.

It is not in dispute that applicant has neither refunded the amount nor has executed the sale-deed.

6. While denying pre-arrest protection, the learned Sessions Judge noted thus:-

"11. It is undisputed that neither the sale-deed

was executed in favour of Jayashree Sontakke nor the sale-deed was executed in favour of the applicant in respect of the disputed property. On the basis of such agreement of sale, the applicant Mithun Kate executed another agreement of sale in favour of Alka Thakare and Shobha Nagmothe etc. and received around Rs. 80 lacs and above by cheque or cash. The applicant Mithun Kate could not execute the registered sale-deed as per those agreements in favour of Alka Thakare and Shobha Nagmothe. Subsequently in the month of October, 2016 settlement deed came to be executed between applicant Mithun Kate on one hand and Alka Thakare and Shobha Nagmothe on other hand. It was agreed that applicant had received the consideration as reflected therein and he had received Rs.12,10,000/- towards stamp duty and registration chargers also. The terms of that settlement deed reflect that there had been some dispute between applicant Mithun Kate with power of attorney holder Afzal Mittha and he is unable to execute the sale-deed of disputed plots.

12. In view of that settlement, applicant executed another agreement of sale in April, 2017 in favour of Alka Thakare and Shobha Nagmothe in respect of another property at Mouza Pipla. The said agreement was executed on 12-05-2017. As per said agreement, applicant acknowledged the receipt of Rs.80,60,400/-. After said agreement, the sale-deed in respect of that property was to be executed within one year. That agreement very stipulated that if within one year the sale-deed could not be executed, the applicant shall refund Rs.80,60,400/- with interest @ of 10% per annum.

13. There is nothing on record to show that applicant executed sale-deed as per agreement dated 12-5-2017 or refunded the amount as agreed upon.

14. On the basis of aforesaid facts and

circumstances, it reveals that applicant had entered into an agreement of sale with Jayashre Sontakke though he was not owner. Then another agreement with Afzal Mittha in 2016. The applicant did not bother to pay the balance consideration and get the sale-deed executed in his favour. Without doing so, the applicant entered into an agreement in respect of same property (of which no sale-deed was executed in his favour) with Alka Thakare and Shobha Nagmothe. There is nothing on record to reveal what attempts were made by the applicant to get the sale-deed executed from original vendor by tendering the balance consideration. On the contrary, it is seen that applicant had received heavy amount from prospective purchasers Alka Thakare and Shobha Nagmothe.

15. Though applicant could not execute the registered sale-deed as per agreement of sale in 2016, he executed another agreement on 12-05-2017. The applicant even did not perform his part as per said agreement and did not execute sale-deed within one year and did not pay the received consideration back along with interest as agreed.”

7. Considering the material on record holistically, *prima-facie* it does appear that offences punishable under Sections 406 and 420 of the Indian Penal Code is made out. The dispute is not purely civil, as is contended by the applicant. Considering the seriousness of the allegation and the fact that custodial interrogation would be necessary to unravel the various facets of the crime, granting pre-arrest protection would only derail the investigation.

8. The application is dismissed.

JUDGE

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Prafulla
Adgokar

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signed by
Prafulla
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