

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

CRIMINAL APPLICATION (ABA) NO. 751 OF 2020

(Pramod Shankar Dongre ..vs.. State of Maharashtra, through PSO, PS MIDC, Nagpur)

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

Court's or Judge's orders

Mr. A. Shukla, Counsel for the applicant,
Mrs. Kalyani Deshpande, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 15-12-2020

Heard.

2. At the very outset, one undertaking which is recorded/given voluntarily, needs recording.

3. The learned Counsel for the applicant Mr. Shukla states, on instructions, that the applicant shall deposit Rs.3,00,000/- in the registry of this Court within five days and the applicant shall have no objection to the complainant Mr. Horo withdrawing the said amount, provided he undertakes to refund the amount in the eventuality of the civil proceedings, which the applicant may institute, culminating in adverse order. The undertaking is accepted and is made a condition for granting pre-arrest protection, alongwith the other conditions to which a reference shall be made hereinafter.

4. Adverting to the merits, the controversy lies in

narrow compass. Admittedly, the property comprising of plot admeasuring 1500 square feet with construction of two rooms was owned by the complainant.

5. According to the applicant, the owner Mr. Sinu Horo executed a power of attorney dated 12-7-2019 empowering the applicant not only to execute the sale-deed but to further present any sale-deed executed by Sinu Horo for registration.

6. According to the complainant, while he did execute such a document, he was misled into so doing. Whether the complainant was misled, is a matter to be decided by the trial Court.

7. However, even if the submission of the applicant is accepted in toto, there is no justification, at least at this stage, why the amount of Rs.6,00,000/-, which is the purported consideration, was not remitted to Mr. Sinu Horo since as power of attorney the complainant was irrefutably holding the amount as trustee. Notably, the power of attorney, even if it is assumed to be a power of attorney, does not state that it is given for consideration.

8. Be that as it may, the Investigating Officer is personally present. According to the Investigating Officer, custodial interrogation is required to recover the original power of attorney. Mr. Shukla states that the

original power of attorney shall be handed over to the Investigating Officer within seventy-two hours. The statement is accepted as an undertaking and made part of the protection condition. In so far as the other submission that amount is to be recovered, the applicant has volunteered to deposit Rs.3,00,000/- and expresses inability to deposit any additional amount. In any event, custody only for the purpose of recovery of balance consideration may not be appropriate.

9. Considering the overall circumstances, and the fact that the applicant has undertaken to deposit the power of attorney, the applicant can be extended pre-arrest protection.

10. In the event of arrest in Crime 908/2020 registered with the MIDC Police Station, Nagpur for offences punishable under Sections 420, 448, 467, 468 and 471 read with Section 34 of the Indian Penal Code, the applicant shall be released on furnishing personal bond of Rs.25,000/- with a solvent surety of like amount, which surety may be furnished within four weeks from the arrest, if any.

7. The applicant shall attend the concerned police station on 18-12-2020 from 11-00 a.m. to 3-00 p.m. and shall cooperate with the Investigating Officer.

8. The applicant shall not make any attempt to influence the witnesses.

9. The applicant shall hand over the original power of attorney to the Investigating Officer.

10. The period of attendance in the police station shall be considered to be deemed custody for the purpose of Section 27 of the Indian Evidence Act.

11. Till the charge-sheet is filed, the applicant shall continue to attend the concerned police station every Monday and Thursday of the week from 11-00 a.m. to 2.00 p.m.

JUDGE

adgokar