

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.404 OF 2020

Ganesh s/o Bhaguji Kanawade,
Age; 38 years, Occ; Agril,
R/o; Near Gujar Market, Akole,
Tq. Akole, District Ahmednagar.

...Petitioner

VERSUS

1. State of Maharashtra
Through Police Inspector,
Sangamner City Police Station,
Tq. Sangamner, District; Ahmednagar
2. Sachin Bajrang Kawade,
Age; Major, Occ; Nil,
Through Superintendent of
Sub Jail, Sangamner,
Tq. Sangamner, District; Ahmednagar ...Respondents.

...

Advocate for Petitioner : Mr. Hemant U. Dhage
APP for Respondent No. 1-State : Mrs. G.L.Deshpande

...

CORAM : SURENDRA P.TAVADE , J.

DATE : 2nd September, 2021.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of learned counsel for both the parties, heard finally at the admission stage.

2. The petitioner is seeking directions to produce

respondent No. 2 before the Sub Registrar Office for execution of sale deed in his favour.

3. Facts giving rise to the present petition can be summarized as under :

Respondent No. 2 along with other persons were arrested by the Sangemnar City Police Station, Tq. Sangamner District Ahmednagar, in Crime No. 222 of 2017 for the offences punishable under Section 408, 418, 467, 468, 471, 477 read with Section 34 of the Indian Penal Code (for short 'IPC') and under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

4. It is contended that the petitioner and the owners of land including respondent No. 2 decided to develop the property jointly of plot bearing Survey No. 113/173 situated at Sangamner Bk. Accordingly the petitioner entered in the development agreement with respondent No. 2 and others. In view of development agreement, the petitioner and other partners collected advance booking amount from the interested persons and assured them to complete the construction of flats and shops and assured them to hand over the possession of the same in time. Due to prosecution of respondent No. 2 the petitioner and others could not execute the development agreement. It is contended that respondent No. 2 is ready and willing

to transfer his rights in the said property in favour of the petitioner and others but he is in jail, therefore the sale deed could not be executed. It is contended that respondent No. 2 is ready and willing to execute the sale deed if he is produced before the Sub Registrar's Office. Therefore, the petitioner prays that he may be produced before the Sub Registrar Office for execution of document. Accordingly the petitioner had filed application before the trial Court but the trial Court rejected the said application on the ground that huge money of many depositors are involved in the crime registered against respondent No. 2. Similarly, there is possibility that respondent No. 2 might have acquired the suit property with the help of money collected from many depositors. The said order is impugned in this petition.

5. On behalf of respondent No. 1-State it is contended that the petitioner is the third party. He may be having development agreement with respondent No. 2, but there are allegations against respondent No. 2 that he has cheated many persons. It is alleged against respondent No. 2 that he collected money from people at large and invested in land. Respondent No. 2 has not filed application for permission to execute the sale deed. Therefore, the present application is devoid of merit.

6. Heard learned counsel for the petitioner and the learned

APP for the respondent No. 1-State and perused the documents.

7. It appears that respondent No. 2 had executed a development agreement of land Survey No. 113/173 situated at Sangamner, in favour of the petitioner and others. At the same time, it is alleged against respondent No. 2 that he has committed misappropriation of huge amount and cheated many people. Therefore, if respondent is allowed to execute the sale deed in favour of the petitioner, then the rights of witnesses would be affected prejudicially. Therefore, it is not just and reasonable to allow the present petition.

8. I must mention here that respondent No. 2 is in jail since long but he has not applied for permission to execute sale deed of land in question in favour of the petitioner. It appears that the petitioner suo-moto filed an application for production of respondent No. 2 for execution of sale deed, which is not permissible. Therefore, in my considered view, during the pendency of the criminal prosecution against respondent No. 2, it would not be just and reasonable to allow him to execute the sale deed in favour of the petitioner. The trial Court has rightly considered the allegations against respondent No. 2 and his role in the crime and expressed fear that if respondent No. 2 is allowed to execute sale deed, it would affect the rights and interest of the depositors. Therefore, in my

opinion the order passed by the trial Court is correct and there is no need to interfere with it. Hence I pass following order :

ORDER

- 1) The petition is dismissed.
2. Rule is discharged.

**(SURENDRA P.TAVADE)
JUDGE**

mahajansb/