IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.326 OF 2021

BALAJI SUBHASH KALAME

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. P.P. More, Advocate for the applicant

Mr. N.T. Bhagat, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27th APRIL, 2021.

<u>ORDER</u> :

1 Present applicant has been arrested on 10.10.2020, in connection with Crime No.361/2020 dated 30.08.2020 registered with M.I.D.C. Police Station, Latur, Dist. Latur, for the offence punishable under Section 420, 467, 468, 471, 387, 506, 120-B of the Indian Penal Code, 1860. Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. P.P. More for the applicant and learned APP Mr. N.T. Bhagat for the respondent.

3 It has been vehemently submitted by learned Advocate Mr. P.P.

More that even if the complaint is taken as it is, yet, no offence can be said to be made out against the present applicant. What has been stated by him is that he came to know that the present applicant has done the transaction through the other accused persons. That means, whatever he was saying was hearsay and it is inadmissible. First Information Report has been lodged by one Vikas Balaji Parsewar. He states that he had purchased agricultural land bearing Sy. No.93 admeasuring 21 Acres from one Shrimant Yashwantrao Patil on 21.06.1975. He had also purchased land Sy.No.92 admeasuring 11 Acres 20 Gunthas on the same day from one Yashwantrao Pandharinath Patil. Both these lands are situated at village Harangul (Bk). Those lands are adjacent to each other and he is cultivating those lands. Later on, those lands have been renumbered as Gat No.111 and his land is now numbered as Gat No.111/1. Thereafter, 44 Gunthas of land from his land has been acquired by Railway Department and he has received the compensation, however, he has filed suit for enhancement in the compensation, which is still pending. He sold one plot of 18.36 Gunthas i.e. 100 x 200 sq.ft. in 2004 to one Pravin Gopinath Pensalwar. Further he has sold two more similar plots to one Hemant Dodal and Shyamsundar Mantri in 2004, to his nephew Anand Parsewar in 2010 admeasuring 100 x 650 sq.ft. i.e. 60 Gunthas by way of Gift Deed and also by way of Gift Deed to his wife admeasuring 02 H 02 R. According to him, still he is the owner of 09 H 73 R and his wife is holder of

02H 02R. Inspite of this, he received a notice stating that by way of Mutation Entry No.10176 dated 29.06.2019 a transaction of sale of land has taken place with one Shaikh Mazhar Mohiyoddin Mukhtar Mohiyoddin and Kazi Shoeb Afroz Moinoddin in respect of 09 H 02 R to the tune of Rs.80,00,000/-. Notice was issued by the Sub Registrar and Collector, Latur for payment of stamp duty, and therefore, that intimation was given. He was asked to take objection, if any. A photo copy of document styled as “खरेदी खत” on a stamp of Rs.100/- dated 05.10.2009 was attached. According to the informant, he has not entered into any transaction, rather his name has been fraudulently deleted in the year 2009. Written application has been given to Talathi, Harangul by said Shaikh Mazhar Mohiyoddin Mukhtar Mohiyoddin and Kazi Shoeb Afroz Moinoddin with their witnesses Yunus Pathan and Dnyanoba Giri, who were the signatories to that document styled as “खरेदी खत”, and therefore, he has lodged the report. Now, the investigation is over and charge sheet has been filed. Perusal of the charge sheet would show that there is absolutely no such document, which would show the involvement of the present applicant. The role attributed to the present applicant as per the prosecution story is that he was the employee of accused No.10 Omprakash Reddy, who was selling bond papers and it is stated that in a bond of the year 2009 said Omprakash Reddy had intentionally bond No.BW491059 for value of Rs.100/- kept blank. On that bond date was mentioned as ‘05.10.2009’ and the present applicant had sold that bond to accused No.6 Shaikh Mazhar by making fake signature in the name of informant. It is stated that this transaction has in fact taken place in 2018. It is also stated that from the house of the present applicant in all 21 registers, from 2013 to August, 2020 in the name of Omprakash Reddy, were found. Learned Advocate for the applicant submitted that there is no such direct evidence against the applicant and as the charge sheet is filed, further physical custody of the applicant is not required. Co-accused Rajkumar Pralhadrao Akangire has been released on bail by this Court on 09.03.2021 vide order passed in Bail Application No.3 of 2021. Therefore, on the ground of parity also he is entitled to be released on bail.

4 Per contra, the learned APP strongly opposed the application and submitted that present applicant is the master mind and everything has been done at his instance. When the informant says that he had never entered into any transaction, then the document itself is forged. Further, one document has been recovered from the co-accused Rajkumar Akangire, which is styled as “Agreement to Sell” executed on 25.11.2019, showing receipt of giving money to the other two accused persons, but it is not signed by the co-accused, but shows that the amount is paid by cheque and it is in respect of the property owned by the informant. Present applicant had intentionally

sold the bond, which was of 2009, in 2018 by making fake signature of the informant, and therefore, his involvement can be clearly seen. His specimens have been taken to compare it with the signature on the bond. However, the original bond, on which the sale deed is written, and the register of the stamps has not been found, and therefore, it has not been sent for the opinion of the handwriting expert. When the said document would be seized, it would be sent. Taking into consideration the concerted effort by all the accused persons, the applicant does not deserve any sympathy.

5 At the outset, it can be seen that now the investigation is over and charge sheet is filed, therefore, the physical custody of the present applicant is no longer required for the purpose of investigation. The case is triable by the Court of Magistrate and the charge sheet is filed on 27.11.2020 bearing Regular Criminal Case No.1331/2020 before Judicial Magistrate First Class, Latur (Court No.2). Perusal of the FIR would show that the name of the present applicant is stated on the basis of some information received by informant. Therefore, it being hearsay cannot be accepted. It states about the agreement to sell, that was got executed by the co-accused. The first and the foremost fact is that the sale deed itself is not registered, which itself is a fabricated document. Even as on today the said sale cannot be said to be a complete sale, giving any kind of right, title or interest in favour of Shaikh

Mazhar Mohiyoddin Mukhtar Mohiyoddin and Kazi Shoeb Afroz Moinoddin. But then what value can be given to the alleged agreement to sell executed by accused Shaikh Mazhar Mohiyoddin Mukhtar Mohiyoddin and Kazi Shoeb Afroz Moinoddin ? Admittedly, it is not signed by the co-accused. Further, it is to be noted that it is well settled principle of law that agreement to sell cannot create any right in favour of anybody. Under such circumstances, whether it would cause any loss to anybody and gain for anybody is a question. Therefore, whether the ingredients of the offence are made out, will have to be considered by the concerned Trial Court. Under such circumstance, when the other documents are on record, though the charge sheet is running in pages, do not show any other involvement of the applicant. When the Investigating Officer appears to have seized about 21 registers from the year 2013 to August 2020 from the house of this applicant and as regards accused No.10 Omprakash Reddy is concerned, it is stated that he had not deposited the bond register of 2009 with the concerned Government office and then he had given it to accused No.6 Mazhar Shaikh. But then the Investigating Officer also says that the original bond paper could not be traced out. Therefore, on the basis of some photo copy if the Investigating Officer intend to say that this applicant is involved in the offence, then whether such piece of evidence would be admissible or not, is a question, and therefore, the applicant need not be kept behind the bars. On the ground of parity also he deserves to be released on bail. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicant Balaji Subhash Kalame, who has been arrested in connection with Crime No.361/2020 registered with M.I.D.C. Police Station, Latur, Dist. Latur, for the offence punishable under Section 420, 467, 468, 471, 387, 506, 120-B of the Indian Penal Code, 1860, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The applicant shall not tamper with the evidence of the prosecution, in any manner.

4 He shall not indulge in any criminal activity.

5 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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