IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

25 **BAIL APPLICATION NO.446 OF 2021**

RAJESH YASHWANT MORE
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Applicant : Mr. Kulkarni Mukul S.
APP for Respondents/State : Mrs. D.S. Jape
...

CORAM : M.G. SEWLIKAR, J.
DATE : 6th September, 2021

ORDER:-

This is an application under Section 439 of the Cr.P.C. for releasing the accused in connection with Crime No. No.191 of 2020 under Section 420, 467, 468, 471 read with Section 34 of the I.P.C. registered with Dhule City Police Station, District Dhule.

2. The allegations made in the FIR are that the informant is the resident of Amalner. One Mahendra Devre is the brother in law of the informant. Accused Harshal Jain is an estate agent dealing in sale and purchase of plots.

3. It is further alleged in the FIR lodged by the informant Chandrashekar Ravan Patil that the informant wanted to purchase a plot at Dhule. Therefore, in the month of June-2020 brother in law by the name of Mahendra Devre informed the informant that accused-Harshal Jain had

suggested a plot. Accordingly, informant and Mahendra Devre approached accused-Harshal Jain. Accused-Harshal Jain showed them plot no.89/3/4/5 in Sudaiv Colony, Valvadi Shivar. Harshal Jain represented that applicant's aunt is the owner of the plot. The name of the owner of the plot is Ashabai Dadabhau Gaikwad. It was represented by Harshal Jain that applicant has a shop in Garud complex. It was further represented that applicant is the nephew of the said Ashabai Gaikwad and Ashabai Gaikwad had authorised applicant to sell the aforesaid plot. He was authorised to hold negotiations also. It is further alleged that in the presence of the informant the applicant called up Ashabai and after having discussion with the applicant price was agreed at Rs.24,38,754/-. The informant held negotiations with the applicant and it was agreed that Rs.4,00,000/- should be paid in advance, agreement of sale shall be executed and it will be registered and remaining amount of Rs.20,38,754/- was to be paid after three months at the time of sale-deed. Thereafter, the informant paid Rs.11,000/- to the applicant as earnest money.

4. It is further alleged that on 18.06.2020 as agreed, the informant, his brother Jagdish and Mahendra Devre remained present at 10.00 to 10.30 am at the shop of the applicant in Garud complex. One lady along with accused-Harshal Jain was also present there. She was introduced by Harshal Jain and the applicant as Ashabai Gaikwad. Accordingly, agreement of sale was typed on the stamp paper of Rs.100/-. Cash of Rs.4,00,000/- was paid by

the informant to the said Ashabai Gaikwad. On 08.07.2020, sale-deed was agreed to be executed. The informant paid Rs.28,000/- to the applicant and Harshal Jain towards the expenses of the sale-deed. It was also agreed that Rs.3,30,000/- by cheque and remaining amount of Rs.14,38,754/- was to be paid in cash. On 08.07.2020 at 10.00 to 11.00 am the informant, his brother Jagdish and Mahendra Devre and one Sandip Desle, the friend of the informant, came to the shop of the applicant and paid Rs.20,38,754/- as agreed above. Accordingly, sale-deed was executed in the office of the registry. Later on, informant came to know that the lady who was projected as Ashabai Gaikwad was not the real owner but she impersonated the said Ashabai Gaikwad. Therefore, offence as aforesaid came to be registered.

5. Heard Shri Kulkarni learned counsel for the applicant and Smt. Jape learned APP for the State.

6. Shri Kulkarni submitted that tenor of the FIR shows that it was the accused-Harshal Jain who had played a major role in getting the sale-deed executed. He submitted that the allegations in the FIR are that the applicant had called up the said lady claiming to be Ashabai Gaikwad and at that time the informant also had a talk with the said Ashabai Gaikwad. However, the prosecution has not collected CDR to show that really any such talk had taken place. He submitted that the transaction had taken place in the year 2020. At that time cash transactions above Rs.50,000/- were prohibited even now they

are prohibited. The informant claims that he paid a whopping amount of Rs.17,38,754/- in cash is unbelievable. He further submitted that the informant has claimed that Rs.11,000/- was paid as earnest money but the same does not find place in the sale-deed. He submitted that this shows that the applicant had no role in the alleged offence.

7. Learned APP Smt. Jape submitted that it was the applicant who had introduced the lady Ashabai Gaikwad as the owner of the plot in question. She further submitted that the sale-deed was typed on the personal computer of the applicant in the shop of the applicant. She submitted that report in that regard is called from the expert but the same is awaited. She submitted that there is sufficient evidence against the applicant to indicate that the applicant himself had played a major role in the execution of the sale-deed. He claimed himself to be the nephew of the said Ashabai Gaikwad. Therefore, applicant should not be released on bail.

8. On perusal of the sale-deed, it appears that there is no mention of Rs.11,000/- paid to the applicant by the informant. If really the applicant was in receipt of Rs.11,000/- from the informant in all probability the same would have found a mention in the sale-deed. However, the same is missing from the sale-deed. Therefore, it is difficult to believe that the applicant had played any role in the alleged transaction. It is further pertinent to note that the applicant is alleged to have introduced the lady as Ashabai Gaikwad. He had

called up the said lady Ashabai Dadabhau Gaikwad and the informant had a talk with the said lady. CDR record is not collected. In the absence of these details, it cannot be said that the informant had a talk with Ashabai Gaikwad. The report of the expert is not produced indicating that the sale-deed was typed on the computer of the applicant. Having regard to all this, case for bail is made out. The applicant, as per the own showing of the prosecution, has a shop in Garud complex. He has roots in society. He is, therefore, not likely to flee from justice. He is in jail since more than almost close to a year. Considering the pandemic crisis, the trial is not likely to commence in near future, I am therefore, inclined to release the applicant on bail. Hence the following order is passed:

ORDER

I) Application is allowed.

II) Applicant be released on PR bond of Rs.1,00,000/- with one solvent surety in the like amount, in connection with Crime No.191 of 2020 under Section 420, 467, 468, 471 read with Section 34 ofthe I.P.C. registered with Dhule City Police Station, District Dhule and on condition that he shall not leave the jurisdiction of the Court without prior permission of the Court.

III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

mub **[M.G. SEWLIKAR, J.]**