

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 538 OF 2021

Nikhil Rajkumar Lune ...Applicant

Versus

The State of Maharashtra ... Respondent

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Advocate for the Applicant : Mr. Hrishikesh Chitaely and
Mr. Rajendra Chavan

APP for the Respondent – State : Mrs. V. S. Choudhari
Advocate for informant to assist APP : Mr. N. V. Gaware

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CORAM : V. G. BISHT, J.

RESERVED ON : 20th SEPTEMBER, 2021
PRONOUNCED ON : 22nd SEPTEMBER, 2021

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PER COURT :-

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 286/2021, registered with Kotwali Police Station, Ahmednagar, District Ahmednagar for the offences punishable under Sections 465, 467, 468, 471, 34 of the Indian Penal Code, 1860.

2. It is the case of prosecution that informant deals in the business of selling and purchasing of plots. Informant is owner

of 195 plots out of Survey Nos.283/1B2, 283/1B3, 283/1/B/1B and 283/1B/1A. The prosecution alleges that in order to cheat informant the applicant prepared and forged a bogus agreement for sale in respect of said property purportedly dated 27.10.2020 and signed by the informant. The said document is used by applicant in a suit before the Civil Court with the help of other accused. He accordingly lodged the First Information Report.

3. Mr. Hrishikesh Chitaely, learned counsel for the applicant, submits that it was the informant who had offered to sell 195 plots to the applicant and accordingly an agreement of sale dated 27.10.2020 came to be executed between the parties. The informant even accepted Rs. 16,00,000/- towards the earnest amount. Even the stamp duty challan was purchased by informant. The learned counsel then invited my attention to the documents styled as "*Sathe Khat*" dated 27.10.2020 in order to bring home the point. According to the learned counsel as the informant started avoiding to execute the sale-deed, a suit came to be filed wherein the learned Civil Judge Senior Division, Ahmednagar has passed an order of *status-quo* to be maintained by the parties. According to learned counsel since the whole transaction between the parties is of

civil nature. There is no question of custodial interrogation and in such circumstances, the applicant deserves the benefit of pre-arrest bail.

4. Mrs. V. S. Choudhari, learned APP for the Respondent – State, on the other hand, would oppose the submissions and invited my attention to the statements of prosecution witnesses who support the contents of F.I.R. Investigation is in progress. Therefore, the application deserves to be rejected, urged learned APP.

5. From the “*Sathe Khat*” (agreement of sale) it is apparent that the said document is purportedly executed by informant in favour of the applicant and had agreed to sell the subject property for the consideration of Rs. 02,01,20,000/- by accepting earnest amount of Rs. 16,00,000/-. There is a copy of challan entry of MTR Form No. 6 which shows the payment towards stamp duty and registration fee in the name of applicant.

6. It is also pertinent to note from the documents filed on record by the applicant that on 19.03.2021, in response to the notice served upon the informant by the applicant, the

informant although denied the transaction, it admitted that as the transaction was to be completed before 31st December and there was concession given by the Government till 31st December in the purchase of stamp duty, he (informant) on his own moneys purchased and deposited amount of Rs. 6,33,600/- by e-challan. Incidentally, I may note that it is the same challan / MTR Form No. 6 which has been referred hereinabove earlier by me. This *prima-facie* goes to show that there was some transaction in respect of subject property between the informant and applicant.

7. I have also gone through the copy of the Special Civil Suit No. 79/2021 filed by the present applicant against the informant and others in respect of the subject property of the complaint. The suit is for specific performance of contract. I have already pointed out from the submission of learned counsel for applicant that in the said suit the learned Civil Judge Senior Division has ordered defendant Nos. 2 to 4 to maintain *status-quo* in respect of the subject property.

8. From the above discussion it is *prima-facie* clear that the dispute between the parties is fairly of civil nature. Even for the sake of argument it is presumed that the said agreement

of sale is forged by the applicant then all the necessary documents are in the custody of Investigating Officer and this outrightly rules out the necessity of custodial interrogation and therefore, I am inclined to allow the application.

9. In view of above, I pass the following order :-

ORDER

- (1) The Application is allowed.
- (2) Interim protection granted by this Court on 25.05.2021 is confirmed and made absolute.
- (3) Application is accordingly disposed of.

**(V. G. BISHT)
JUDGE**

shp/-