

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.787 OF 2021

Lalit Parasmal Chandaliya (Jain)
Age : 52 years, occ : business
R/o Flat No. B-103, Disha Karizma
Apartment, Anguribag,
Aurangabad.

Applicant

Versus

The State of Maharashtra & other

Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO.967 OF 2021

Sanjay Parasmal Chandaliya
Age : 54 years, occ : business
R/o Jafar Gate, Bhikshu Complex,
Near Abhinay Theaters, Behind
Vishal Traders, Near Bhavan,
Aurangabad

Applicant

Versus

The State of Maharashtra & other.

Respondents

...

Mr. Abhishek Deshpande, Adv. for applicant in ABA No.787/2021.
Mr. A.S. Tilve, Adv. for applicant in ABA No.967/2021.
Mr. S.B. Narwade, A.P.P. for respondent – State.
Mr. V.P. Bakal, Advocate for complainant

...

CORAM : **PRAKASH D. NAIK, J.**

DATE : 30-11-2021.

ORDER :

1. The applicants in both these applications are apprehending arrest in Crime No.483/2021 registered with CIDCO

Police Station, Aurangabad for the offences punishable under Sections 406, 420, 468, 465, 468, 471 read with Section 34 of the Indian Penal Code (for short, "I.P.C."). The First Information Report (fo short "F.I.R.") was registered on 5th July 2021 by Smt. Vidya Babhulgaonkar.

2. The case of the prosecution is that, the complainant was in need of a plot. Sanjay Chandaliya showed plot No. 5 of CTS No.133/2 situated at Suraj Nagar, Harsul, Aurangabad. He also informed that the plot is owned by Ramsing Harne, Pandit Harne and Bandu Harne. Sanjay Chandaliya is their power of attorney holder. After discussion with him, Rs. 15,000/- were given to him and sale deed was registered on 30th March 1998. On 1st March 2020 the complainant noticed that shed was constructed on the said plot. It was put up by Ankush Mokle. He informed that he had purchased the plot for Rs. 1,80,000/- from Shobhadevi Dhoka and the document was executed on stamp paper and notarized on 15th September 2014. On inquiry with Shobhadevi, she informed that she had taken the plot from Lalit Parasmal Chandaliya by executing rectified sale deed and consent deed. The complainant perused the documents and noticed that Plot No. 5, CTS No. 133/2 is owned by Ramsing Harne, Pandit Harne and Bandu Harne. Sanjay Chandaliya and Lalit Chandaliya are power of attorney holders. Lalit Chandaliya had sold plot to Shobhadevi on 30.09.1993 situated at Survey No. 133, plot No.43. However, plot could not be handed over to her, hence the plot purchased by complainant on 30.03.1998

from Sanjay Chandaliya was sold to Shobhadevi on notarized document.

3. Both the applicants had preferred applications for anticipatory bail before the Court of Session. The application preferred by Lalit Chandaliya was rejected by order dated 14th July 2021. The application preferred by Sanjay Chandaliya was rejected by Sessions Court by order dated 10th August 2021.

4. Learned Advocate for the applicant in ABA No. 787 of 2021 and learned Advocate representing the complainant submitted that there is settlement between the complainant and applicant Lalit Parasmal Chandaliya (Jain). The complainant filed affidavit dated 20th October 2021 confirming settlement between them and the complainant has undertaken not to prosecute the matter in future against Lalit Parasmal Chandaliya. It is further stated that the application preferred by the above applicant be allowed.

5. In the affidavit by respondent No. 2 Vidya Babhulgaonkar dated 20.10.2021 it is stated that, accused No.2 (Lalit Chandaliya), accused No.3 Shobhadevi Dhoka and respondent No. 2 (complainant) have settled the dispute. The complainant has no grievance against accused Nos.2 and 3. Dispute in respect to plot No.5, situated at Suraj Nagar is settled and complainant has received Rs. 4,00,000/- to the extent of share of accused Nos.2 and 3. Deed of compromise dated 11.08.2021 is executed. Complainant does not want to proceed with criminal proceedings arising out of Crime No. 483/2021 against accused Nos.2 and 3. The settlement

deed was executed between Lalit Chandaliya and complainant on 11.08.2021. In the said document it is stated that there is settlement between parties. Lalit Chandaliya and Shobhadevi Dhoka has parted their share of Rs. 4,00,000/- to complainant and they have resolved their dispute.

6. Learned Advocate for the applicant Lalit Chandaliya submitted that in view of settlement with the complainant, the applicant shall not be subjected to custodial interrogation.

7. Learned Counsel for the complainant submitted that there is compromise with applicant Lalit Chandaliya. The amount of Rs. 4,00,000/- has been given to the complainant and the dispute is resolved.

8. Learned Advocate for the applicant in ABA No. 967 of 2021 submitted that it is not disputed that the said applicant was power of attorney holder. In view of settlement with the co-accused Lalit Chandaliya, who is the brother of applicant, the applicant need not be subjected to custodial interrogation. The complainant do not wish to prosecute Lalit Chandaliya which is evident from the affidavit filed by complainant. Fraud is played by accused Nos.2 and 3. Correction deed not signed by applicant.

9. Learned Counsel for the applicant Sanjay Chandaliya further contended that, the applicant sold the plot by registered sale deed on 30.03.1998. The applicant is power of attorney holder. The plot was sold in presence of Parasmal Chandaliya, who is the father of applicant. The second witness was Namdeo Tukaram Sonar.

The possession was handed over to complainant. Lalit had executed correction deed by using power of attorney. Sanjay and Lalit are brothers. There is dispute between them after death of father.

10. Learned counsel for the complainant submitted that although there is settlement with Lalit Chandaliya, there is no such compromise with applicant Sanjay Chandaliya. He is the person who is involved in making false representation to the complainant. He had represented that he is the only power of attorney holder and executed transaction with the complainant.

11. Learned A.P.P. submitted that both the applicants are involved in the crime. The complainant was cheated. Both the applicants were power of attorney holders. Custodial interrogation of both applicants is necessary. The accused were directed to produce power of attorney. Documents are required to be recovered.

12. From the documents on record, it is pertinent that the plot was sold to the complainant for a consideration of Rs. 15,000/- in the year 1998. The second transaction with regard to the same plot was executed between Shobhadevi Dhoka and Lalit Chandaliya by executing sale deed. Shobhadevi Dhoka had sold the plot to Ankush Mokle for a consideration of Rs.1,80,000/-. Thus, the plot which was sold to the complainant through applicant Sanjay Chandaliya, was thereafter sold to others. The settlement deed has been executed between Lalit Parasmal Chandaliya and Vidya

Pramod Babhulgaonkar (applicant and complainant). In the said settlement deed it was stated that the complainant had lodged F.I.R. with CIDCO Police Station. Lalitkumar Jain had mistakenly sold the plot to another person at the instance of Sanjay Chandaliya. Thereafter the plot was sold to two other persons. It was agreed between both the parties to settle the dispute. Amount of Rs.4,00,000/- was parted to the complainant for settlement. The complainant is withdrawing the complaint against Lalit Chandaliya and Shobhadevi Dhoka.

13. The contention of the complainant is that accused Nos.2 and 3 had compensated the complainant and there is no such compromise with applicant Sanjay Chandaliya. It is pertinent to note that the subsequent transactions were not executed by Sanjay Chandaliya. The first transaction of 1998 was executed with complainant by Sanjay Chandaliya. The complainant was put into possession of plot by him. The F.I.R. mentions that after executing sale deed, the complainant could not construct house. The sale deed was registered. She was in possession. On 01.03.2020 she found that out of the accused had put up shed. Thus, the applicant Sanjay had handed over possession to complainant. He is not party to subsequent transactions. The second transaction was by Lalit Chandaliya. The complainant has compromised the matter with Lalit Chandaliya and Shobhadevi Dhoka. In these circumstances, the applicant Sanjay Chandaliya cannot be subjected to custodial interrogation. The entire matter relates to the documents. The

complainant has compromised with Lalit Chandaliya and stated that she do not wish to pursue proceedings against him. Taking into consideration the circumstances, the applications require to be allowed. Hence, the following order.

ORDER

- (i) Anticipatory Bail Application Nos. 787 of 2021 and 967 of 2021 are allowed.
- (ii) In the event of arrest of the applicants in Crime No.483/2021 registered with CIDCO Police Station, Aurangabad, the applicants shall be released on bail on executing P.R. Bond in the sum of Rs. 25,000/- each with one or more sureties in the like amount.
- (iii) The applicants shall attend the Investigating Officer on 13th, 14th and 15th December, 2021 between 11.00 a.m. and 1.00 noon and thereafter as and when called for till filing of the charge sheet.
- (iv) Anticipatory Bail Applications stand disposed of accordingly.

(PRAKASH D. NAIK, J.)

VD_Dhirde