

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 881 OF 2021

1] Rohit Prakash Matala
Age 31 years, Occ. Service.

2] Rushikesh Prakash Matala,
Age 29 years, Occ. Service,

3] Parimal Prakash Matala,
Age 32 years, Occ. Service.

All residents of A-91, Near Balaji
Temple, Shramik Nagar,
Savadi, Ahmednagar.

.. APPLICANTS
[Accused Nos. 4,6 and 7
respectively]

VERSUS

The State of Maharashtra

.. RESPONDENT.

Shri VY Bhide, Advocate for the applicants,
Shri S.B. Narwade, APP for respondent
Mr. D.D. Choudhari, Advocate for assisting the APP.

CORAM : V.G. BISHT, J.

ORDER RESERVED ON 26th August.2021.
ORDER PRONOUNCED ON : 6th September, 2021.

PER COURT:

1] This is an application under Section 438 of Cr.P.C. preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No.0439 of 2021, registered with Police Station, Kotwali, Dist. Ahmednagar for the offences punishable under Sections 419, 420, 465, 467, 470, 471, 34 of IPC.

2] The prosecution case, in short, is that the informant's father, namely, Shaikh Ismail Shaikh Baban was the original owner of Plot No. 189 admeasuring 188.32 square meters situated at Kedgaon, Dist. Ahmednagar. He died on 4.6.2016. In order to get the said property mutated in his name, the informant, somewhere in the year 2020, visited the Tahsil Karyala, Kedgaon and found that the said property was transferred twice; firstly, by registered sale deed dated 24.10.2017 and then secondly, on 25.6.2018, by somebody by impersonating the father of the informant. The accused Akshay Jaywant More and Rohit Prakash Matale (Applicant No.1) are the attesting witnesses to the execution of sale deed dated 24.10.2017; whereas, sale deed dated 25.6.2018 was executed in favour of Rushikesh Prakash Matale (Applicant No.2) by accused Prakash Arjunrao Matale and Rahul Ashokrao Bharekar. In the second sale deed, applicant No.3 – Parimal Prakash Matale acted as an attesting witness. Accordingly, complaint came to be lodged.

3] Mr. Bhide, the learned counsel for the applicants, submits that the applicants are not concerned with accusation of impersonation, cheating or inducement for delivery of property, forgery and use of any forged document as genuine for personal benefit. According to the

learned counsel, applicant No.2 is the subsequent purchaser and it is not the case that he had in any manner colluded with the earlier vendors. Moreover, some of the accused have already been released on anticipatory and regular bail. Both the sale deeds have been seized by the Investigating Officer. The basic dispute being of civil nature, the custodial interrogation of the present applicants is not necessary.

4] Mr. Narwade, learned APP, on the other hand, opposed the submissions and contended that the custody of the present applicants is very much necessary as they are the beneficiaries of the offence of cheating and forgery. The investigation is in progress and, therefore, in such circumstances, the application does not merit attention.

5] As far as sale deed dated 24.10.2017 is concerned, admittedly in that sale deed accused Akshay Jaywant More and applicant No.1 – Rohit, acted as attesting witnesses, of which admittedly, Akshay Jaywant More has been released on anticipatory bail by the learned trial court. I do not see any reason not to equate applicant No.1 Rohit qua accused Akshay More, who is similarly situated. His role is simpliciter of an attesting witness. Nothing is brought on record to show that he, in any manner, helped the person who impersonated to be the father of the informant.

6] Coming to the second sale deed dated 25.6.2018, said sale deed was executed by Rahul Ashokrao Bharekar in favour of Rushikesh Prakash Matale (applicant No.2) in which Parimal (applicant No.3) and one Murlidhar Vishwanath Kodam (accused No.8) acted as attesting witnesses. It is also pertinent to note here that said Murlidhar Vishwanath Kodam has also been given the benefit of pre-arrest bail by

learned trial court on 30.7.2021. Since the role of Parimal (applicant No.3) is at par with said Murlidhar Kodam, being an attesting witness and, therefore, in my considered opinion, he also deserves parity.

7] Now, the only question remain is that the second sale deed was executed in favour of applicant No.2 - Rushikesh. As already pointed out, the first sale deed was executed by practicing impersonation and lateron similar sale deed came to be executed in favour of applicant No.2 – Rushikesh and, therefore, it can be prima facie opined that the present applicant No.2 Rushikesh might have been also the victim of cheating. Prima facie, there is nothing on record to suggest that applicant No.2, in any manner, practiced either impersonation or committed forgery and used forged document as genuine for personal benefit.

8] All said and done, the fact remains that both the sale deeds are in custody of the investigating officer. There is nothing to be recovered from these applicants. Having regard to the totality of the facts and circumstances of the case, in my considered opinion, the present applicants can be admitted to pre-arrest bail, with certain conditions.

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

: O R D E R :

[I] In the event of arrest of the applicant in connection with Crime 0439 of 2021, registered with Police Station, Kotwali, Dist. Ahmednagar for the offences punishable under Sections 419, 420, 465, 467, 470, 471, 34 of IPC, the applicants be enlarged on bail on their furnishing PR Bond in the sum of Rs. 25,000/- each, with one or two sureties in the like amount.

[II] The applicants shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.

[III] They shall not tamper with the evidence.

10] The application stands disposed of in aforesaid terms.

[V.G. BISHT]
JUDGE

grt/-