IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1562 OF 2021
WITH
CRIMINAL APPLICATION NO.3124 OF 2021

Rajappa S/o Kashinath Katke
...APPLICANT
VERSUS

The State of Maharashtra
...RESPONDENT

...
Mr.Sudarshan J. Salunke Advocate for Applicant in Bail Application No.1562 of 2021.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
Mr.Shivprasad G. Jadhavar Advocate for Applicant in Criminal Application No.3124 of 2021.
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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 23rd DECEMBER, 2021

ORDER :

1. Present Application has been filed under Section 439 of the Code of Criminal Procedure by the original accused No. 1, who has been arrested in connection with Crime No. 419 of 2021 dated 23rd October 2021 registered with Shivaji Nagar Police Station, District-Latur for the offence punishable under Section 177, 182, 406, 418, 420, 423, 467, 468, 34 of the Indian Penal

Code and under Section 82 (D) of Indian Registration Act. He came to be arrested on 25th October 2021.

2. Heard learned Advocate Mr. Salunke for the applicant, learned APP Mr. Kagne for respondent – State and learned Advocate Mr. Jadhavar assisting the learned APP.

3. Perusal of the First Information Report lodged by one Kakasaheb Raosaheb Bharate, who is the applicant in Criminal Application No.3124 of 2021, would reveal that he had purchased the house from the present applicant in the year 2018 for a consideration of Rs.54,51,000/-. It also appears from the First Information Report that initially the informant had entered into the agreement to sale. He had then issued a public notice inviting objections and no objection was received by him. He had thereafter deposited an amount of Rs.44,31,000/- in the loan account of the applicant as per the agreement which was towards the amount of consideration. From the remaining amount, he had paid an amount of Rs.1,51,000/- in cash and Rs.8,69,000/- by cheque. Thereafter registered sale deed was executed by the present applicant in the name of the informant and his wife on 6th August 2018. There is a specific recital in the sale deed that there is no encumbrance on the house. Thereafter

the informant started depositing the tax after his name was mutated to the municipal record. He then states that when his daughter intended to take education abroad, he decided to raise loan on the house in the year 2020 and therefore made application to a Nationalized Bank. However, he could not get clear title report in view of the fact that it was revealed that the applicant had already executed a sale deed in the name of one Kailas Sureshchandra Warma on 7th November 2016. Informant then issued notice to the applicant through Advocate. Applicant thereafter met him and told that the said sale deed executed in favour of Kailas Warma was pursuant to the loan taken and it was nominal. He undertook, by giving a writing on the stamp paper of Rs.100/- on 5th January 2021, that he would get that sale deed cancelled. Thereafter on 7th July 2021, HDB Financial Services Limited, branch Latur had affixed a notice on the house. From that notice it was revealed by the informant that the applicant had taken loan from said financial institution by giving the house as security. The house was put to auction. Informant then approached D.R.T., Aurangabad and got the stay. It was then revealed to the informant that the applicant had cheated him. Hence, he lodged the report.

4. It is to be noted that along with the Application to assist the PP, the informant has attached all the documents executed in his favour as well as sale deed which was executed by the applicant in favour of Kailas Warma on 7th November 2016. Further, it is also to be noted that copy of the settlement letter dated 28th October 2021 has also been annexed, which was given to the applicant by HDB Financial Services Limited. From the said letter, it appears that though the loan that was outstanding was to the tune of Rs.50,19,500.80/-, the financial institution decided to settle the amount to Rs.21,00,000/-. Even the installments were given. It has been submitted on behalf of the informant as well as the applicant that the first installment of Rs.5,00,000/- has been deposited by the applicant long back as per the schedule, however, he had not deposited the other two installments to the tune of Rs.16,00,000/-.

5. No doubt, it appears that the investigation is still in progress and the charge-sheet is yet to be filed. Yet, taking into consideration the fact that the offence appears to be depended on the documents, which appear to be either available with the informant in the form of original or photocopies. It can be collected by the Investigating Officer. Further physical custody of the applicant may not be required for that purpose.

6. Today, documents have been tendered on behalf of the applicant, which are marked Exhibit - “X”, stating that from State Bank of India, Ausa Branch, amount of Rs.16,00,000/- has been transferred to HDB Financial Services Limited. That means, as per the said settlement letter given by the said financial institution dated 28th October 2021 of which the limitation to give all the installments is upto 30th December 2021 has been complied with and therefore, that transaction can be principally taken as mitigated.

7. Further, the learned Advocate appearing for the applicant, on the instructions of his client, i.e. one of the relatives of the applicant, who is present before the Court, submits that the applicant would clear the hurdles, if at all there are, in view of the transactions with Kailas Warma and also the proceedings before the D.R.T. Under such circumstance. When substantial relief appears to be received by the informant, the applicant deserves to be released on bail. Hence, the following order:-

O R D E R

i) The Bail Application stands allowed.

ii) The applicant – Rajappa S/o Kashinath Katke be released on bail in connection with Crime No. 419 of 2021 dated 23rd October 2021 registered with Shivaji Nagar Police Station, District-Latur for the offence punishable under Section 177, 182, 406, 418, 420, 423, 467, 468, 34 of the Indian Penal Code and under Section 82 (D) of Indian Registration Act on PR Bond of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

iii) The applicant shall give his Mobile Number to the Investigating Officer as well as to the Trial Court and shall comply with the requirements set out in Para No. 12 (1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

iv) The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner and shall abide by the oral undertaking.

v) Bail before the Trial Court.

. Criminal Application No. 3124 of 2021 for assist to PP stands allowed.

. Parties to act upon authenticated copy of this order.

[SMT. VIBHA KANKANWADI , J.]

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