

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2448 OF 2019

Shivaji Baburao Ghodke	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Yogesh Birajdar i/b. Mr. Nagraj Shinde, for for the Applicant.
Ms. Anamika Malhotra, APP for the Respondent-State.

CORAM : N. J. JAMADAR, J.
DATE : SEPTEMBER 04, 2021

P.C.:

1. This is an application for pre-arrest bail in connection with C.R. No. 619 of 2017 registered with Sadar Bazar police station, Solapur for the offences punishable under sections 120-B, 420, 467, 468 and 471 read with 34 of Indian Penal Code, 1860 (the Penal Code).

2. The indictment against the applicant is that the deceased father of the first informant was allotted a plot No. 19 in Siddheshwar Co-Op. Housing Society situated at Gut No. 61/1/A admeasuring 3000 sq. mtrs. The father of the first informant expired on 15th November, 2000. The first informant learnt that the said plot was sold by Ashok Devkar, the principal accused to another person. Upon inquiry with the office of the Sub Registrar,

it transpired that a forged and fabricated sale deed was executed on the basis of a power of attorney given by a member of the society namely Kashinath Chougule. The said Kashinath Chougule, upon realizing the fraud, had instituted a suit for cancellation of the said power of attorney. It was alleged that, the applicant had executed the said sale deed as a consenting party, in the capacity of the office bearer of the Siddheshwar Co-Op. Housing Society though the applicant was not a member of the said society much less its office bearer. Thus in pursuance of the criminal conspiracy the principal accused Ashok Devkar and the applicant and the other co-accused forged the documents and used the forged documents as genuine and also committed cheating by forgery.

3. By an order dated 15th November, 2019 this Court granted the interim relief to the applicant. It was recorded that the principal accused Ashok Devkar has been granted anticipatory bail in ABA No. 01 of 2019, on the ground that the principal accused has paid the amount to the first informant and on the count of ill-health as well. The role attributed to the applicant was that of having executed the sale deed in the capacity of a consenting party.

4. I have heard Mr. Birajdar, learned counsel for the applicant

and Ms. Malhotra, learned APP for the State. I have also perused the material on record including the allegations in the first information report carefully. The learned counsel for the applicant would urge that as the principal accused has been granted pre-arrest bail, the applicant who has been attributed with a minor role deserves the same dispensation. It is not the case that the applicant had allegedly forged the instruments or derived any benefit out of the transaction in question. The allegations in the F.I.R that the applicant is not an office bearer of the society is a contentious issue. Thus, at this stage, the custodial interrogation of the applicant is not warranted, and, therefore, the order of interim bail be made absolute, urged the learned counsel for the applicant.

5. In opposition to this, Ms. Malhotra submitted that the applicant cannot seek parity as this Court granted anticipatory bail to the principal accused Ashok Devkar on the ground that the later had paid the amount to the first informant and complied with the undertaking given to this Court and also that he was suffering from serious heart ailment. The applicant thus does not deserve to be enlarged on pre-arrest bail, submitted Ms. Malhotra.

6. Indeed while granting pre arrest bail to Ashok Devkar, the

principal accused, this Court took note of the fact that the said accused had paid the amount to the first informant, as undertaken before this Court, and that he was unwell. Nonetheless, the fact remains that the allegations of cheating and forgery were primarily against the principal accused Ashok Devkar. The role attributed to the applicant was that of executing a sale deed as a consenting party, in the purported capacity of the office bearer of Siddheshwar Co-Op. Housing Society. There is a significant difference in the role attributed to the principal accused and the applicant and the degree of alleged complicity thus varies. Even otherwise, the offence revolves around documents. Custodial interrogation of the applicant does not seem warranted. In this view of the matter, in my considered view, the applicant is entitled to claim the same dispensation as was extended to the principal accused Ashok Devkar. The applicant also appears to have roots in society. Thus, the possibility of fleeing away from justice and tampering with prosecution evidence/witnesses appears remote. I am thus persuaded to exercise the discretion in favour of the applicant.

7. Resultantly, the application deserves to be allowed by confirming the interim order dated 15th November, 2019. Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The interim order dated 15th November, 2019 stands confirmed on the same terms and conditions.
- 3] In addition, the applicant shall regularly attend the proceeding arising out of C.R.No. 619 of 2017, before the jurisdictional Court.
- 4] The application stands disposed of.

(N. J. JAMADAR, J.)