

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 641 OF 2019
WITH
INTERIM APPLICATION NO. 375 OF 2019**

Abhijeet Anil Thorat ... Applicant

Versus

The State of Maharashtra ... Respondent

**ALONG WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.959 OF 2019**

1. Mukund Hiranman Shinde
2. Ganesh Bhausaheb Kute
3. Sameer Sikandar Shaikh
4. Mahesh Prakash Adhav ... Applicants

Versus

The State of Maharashtra ... Respondent

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Mr. Manoj Mohite i/b. Mr. Nilesh Wable, Advocate for the Applicant in both Anticipatory Bail Applications.

Mr. A. R. Kapadnis, APP for the Respondent – State.

Mr. Jay S. Patil i/b. Mr. V. V. Purwant Advocate for the Applicant in Interim Application No. 375 of 2019.

Mr. V. V. Sarjine, Ranjangaon Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 2nd MARCH, 2021

PER COURT:

1. The applicants are apprehending arrest in C.R. No.223 of 2018 registered with Ranjangaon Police Station, Pune for offences under Section 415, 420, 465, 467, 468 r/w Section 34 of Indian Penal Code. (for short “IPC”). The complainant filed private

complaint bearing No. 203 of 2018 on 17th July 2018 before the Court of JMFC Ghodnadi. The learned J.M.F.C. by order dated 19th October, 2018 directed the investigation under Section 156(3) of Cr.P.C. FIR was registered on 10th December, 2018.

2. The case of the complainant is that, he purchased landed property at Gat No.1363, Village Ranjangaon Taluka Shirur, Dist. Pune admeasuring 13.5 R in 2008. He sold 04 R to Vinod Sakore in December, 2008. From 2008 to 2015 three buildings and one chawl was constructed on remaining land. He was in need of money. Accused Paresh Supte took him to Kamal Dashrath Sawant. He was ready to give money to complainant by mortgaging property at Ranjangao. Paresh Supte told complainant to obtain loan of Rs. 15 Lakhs and hand over Rs. 6 Lakhs to him and use 9 Lakhs for himself. Kamal Sawant prepared Sale Deed instead of Mortgage Deed. Complainant took Rs. 15 Lakhs. Rs. 6 Lakhs were given to Paresh Supte. Complainant learnt about Sale Deed and cancelled it on 29th September, 2017. Thereafter, Paresh Supte introduced complainant to Abhijeet Thorat. He agreed to give loan amount by mortgage of property. It was agreed that loan of Rs. 15 Lakhs to be disbursed. 6 Lakhs to be repaid by Paresh Supte and Rs.9 Lakhs by complainant. On 3rd October, 2017, Supte gave document to complainant and told

him to sign the same. It was a Mortgage Deed. He signed it. Accused Nos. 1 to 5 came to office of Tahsildar. Complainant demanded document. It was not given. On 4th April, 2018, complainant approached Abhijeet Thorat. He was told that Mr. Thorat has purchased his property. Complainant verified document and noticed that accused prepared Sale Deed instead of Mortgage Deed.

3. The applicants in Anticipatory Bail Application No. 959 of 2019 were the witnesses to the documents, whereas the applicant in Anticipatory Bail Application No.641 of 2019 is the person in whose favour the document was executed.

4. Learned advocate for the applicants submitted that the applicant in Anticipatory Bail Application No. 641 of 2019 had agreed to purchase the property for consideration of Rs.18,50,000/- and after receiving the said consideration, the complainant executed registered Sale Deed. The dispute is purely of Civil Nature. The complainant has filed the Civil Suit for cancellation of Sale Deed which is pending before the Civil Court. The Sale Deed was signed by the complainant. The applicant has cooperated with the investigation. Custodial interrogation of the applicant is not necessary. It has to be established from the Sub Registrar record, whether the valuation of the property is under valued and stamp

duty paid is not sufficient. It is difficult to believe that the complainant has signed document under the belief that it is Mortgage Deed, although it was a Sale Deed. Notice was published before the Sale Deed was executed. All the documents are in custody of the investigating agency.

5. It is submitted that the applicants in Anticipatory Bail Application No. 959 of 2019 has signed the documents as witnesses. Their custodial interrogation is not necessary. Nothing is to be recovered from them. They have cooperated with the investigation.

6. Learned APP submitted that the complainant is a senior citizen. He was mislead by the accused. Mortgage Deed was to be executed for advancing loan. However, the accused executed Sale Deed and cheated the complainant. The value of the property is much more than the consideration shown for purchase of property. The investigating Officer has filed the affidavit in reply dated 2nd April, 2019 and additional affidavit dated 11th July, 2019. In the affidavits it is stated that accused No.2 Paresh Supte was arrested on 29th March, 2019. The complainant has given valuation of disputed property. The value of property is more than two Crores. During the course of investigation, Sale Deed dated 8th February, 2008, 1st November, 2008 and 3rd October, 2017 were collected from the Sub

Registrar, Shirur and Talegaon, Dist. Pune. During the course of investigation letter was issued to Branch Manager, Bhairvnath Patsanstha and necessary documents were obtained. It was revealed that the property was mortgaged. Instead of Mortgage Deed, the accused executed Sale Deed mentioning area of 13.5 R instead of 9.5 R. In the Sale Deed dated 3rd October, 2017 vacant space was shown instead of buildings and chawl. Applicant Abhijeet Thorat executed Sale Deed instead of Mortgage Deed. Applicants Ganesh Kute, Mahesh Adhav acted as witness to the registered document. Applicants Sameer Shaikh and Mukund Shinde have given Aadhar cards in support of the document. Two cases are registered against the applicant Abhijeet Thorat in the past vide C.R. No. 94 of 2018 for offences under Sections 323, 324, 452, 504 & 506 r/w Section 34 of Indian Penal Code and C.R. No.136 of 2010 for offences under Sections 353, 186, 323, 504 & 506 of IPC. The applicants in Anticipatory Bail Application No. 959 of 2019 are having friendly relationship with each other. All the accused have acted in connivance with each other.

7. The complainant has filed application for intervention. At the instance of the complainant it is submitted that the Mortgage Deed was to be executed towards advancing loan amount. The

accused executed Sale Deed. The valuation of the property is huge and consideration shown is Rs. 18,50,000/- in the Sale Deed. The complainant has filed the suit for cancellation of Sale Deed dated 3rd November, 2017. At-interim order has been passed by the Civil Court, directing the defendants not to create third party interest in the property. The complainant has relied upon valuation report which is shown that the value of the property more than two Crores. The complainant was in need of finance to clear his dues. Accused No.2 Paresht Supte introduced him to the applicant Abhijeet Thorat. On 3rd October, 2017 complainant came to office of Tahsildar. The accused No.2 met him at the said place and handed over deed to him. He was told to sign the said document and put his thumb impression. The intervenor read contents of the document which was Mortgage Deed. Accordingly he signed and put his thumb impression on the last page of the documents. Thereafter, the accused No.1 came in the office of Tahsildar. He was not knowing accused Nos.3 to 5. He was informed that they came there as witnesses. The document was registered. He was not provided the document. Thereafter, the accused No.1 told the complainant that he has purchased the property. The complainant is owner of the property admeasuring 9.5 R. The Sale Deed is executed for 13.5 R. The property consist of three buildings and one chawl. The Sale Deed refers to as open land.

8. Having heard both sides. I have perused the documents relied upon by both the sides. The complainant filed private complaint on 17th July, 2018 alleging offences under Sections 415, 420, 465, 467 & 468 of IPC. The Court vide order dated 19th October, 2018 called for the report from the Police under Section 156(3) of Cr.P.C. The FIR was registered on 10th December, 2018. The complainant had purchased the property in 2008. Part of the property was sold to another person. The complainant was in need of money. It is alleged that accused No.2 Paresh Supte has introduced the complainant to Kamal Sawant. He agreed to give money to the complainant in lieu of mortgage of the said property. Instead of executing Mortgage Deed, Kamal Sawant had executed Sale Deed. The complainant took loan of Rs. 15 Lakhs and part amount was given to accused No.2. From the aforesaid fact reflected in the FIR. It is evident that the transactions aken to the allegations levelled against the applicants were earlier executed with Kamal Sawant. Thereafter, cancellation deed was executed and the Sale Deed was cancelled on 29th September, 2017. Accused No.2 Paresh Supte took complaint to the accused No.1 Abhijeet Thorat. Similar transaction was executed. According to complainant he agreed to execute Mortgage Deed. However, the accused No.1 executed Sale Deed. From the averments made in the intervenor's application it is

apparent that according to complainant he had visited office of Tahsildar on 3rd October, 2017. Accused No.2 handed over him the document. The complainant read the document. It was a Mortgage Deed. He has signed and put his thumb impression on the last page of the document. Subsequently, he realized that the accused have fabricated the Sale Deed. Thus, according to complainant he has signed and put his thumb impression on the last page of the document which was a Mortgage Deed. On perusal of the last page of the Sale Deed it can be seen that the signatures, thumb impression and the photographs of the complainant is appearing on the last page of the sale dated. The last page clearly indicate that it is a Sale Deed which has been voluntarily executed by the parties. Thus, there is no scope for changing Mortgage Deed into Sale Deed. The Sale Deed contains signatures of Mahesh Adhav and Ganesh Kute as witness. Mukund Shinde and Sameer Shaikh had furnished their Aadhar Cards. The case of accused No.1 is that he had published notice before executing the Sale Deed. Accused No.1 and the complainant had executed affidavit dated 29th January, 2018 with regards for transferring electricity connection. The affidavit bears thumb impression and photographs of the complainant. The complainant has filed the suit for cancellation of Sale Deed. Interim relief has been granted by the Civil Court directing the defendants not to

create third party interest. During the pendency of the application before the Sessions Court, interim protection was granted to the applicants with direction to make themselves available for the interrogation by the Police as and when required. During the pendency of this application, this Court granted interim protection to applicant Abhijeet Thorat vide order dated 14th March, 2019. The applicants in Anticipatory Bail Application No. 959 of 2019 were also granted interim protection vide order dated 24th March, 2019. The affidavit indicate that the major part of the investigation is completed. Accused No.2 was arrested. The investigation is going on since 2018. Matter relates to the documents. Custodial interrogation of the applicants is not necessary. Hence, both the applications can be allowed.

ORDER

- (i) Anticipatory Bail Application Nos.641 of 2019 & 959 of 2019 are allowed;
- (ii) In the event of arrest of the applicants in connection with in C.R. No.223 of 2018 registered with Ranjangaon Police Station, Pune, the applicants 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 cooperate the investigation and they shall appear before the investigating officer as and when called for till filing of charge-sheet.

(iv) The applicants shall not tamper with the evidence in any manner.

(v) Both Anticipatory Bail Applications as well as Interim application No. 375 of 2019 stand disposed of accordingly.

(PRAKASH D. NAIK, J.)