

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

ANT. BAIL APPLICATION NO.2602 OF 2019

Manohar Pamandas Jani & Ors. ... Applicants
Vs
The State of Maharashtra & Anr. ... Respondents
...

Mr. Sachinkumar P. Rajepandhare for the Applicant.
Mr. Yogesh Dabke, APP for the Respondent-State.
Mr. Samir Kumbhakoni for Respondent No.2.

CORAM : SANDEEP K. SHINDE J.
DATE : APRIL 9, 2021.

P.C. :

Heard learned counsel for the applicant, learned prosecutor for the State and Mr. Kumbhakoni, learned counsel for the Intervenor.

2 Applicants are seeking pre-arrest bail in connection with the Crime No.0759 of 2019 registered with Sadar Bazar Police Station, Solapur for the offences punishable under Sections 406, 420, 467, 468, 504, 506

2019.odt

and 34 of the Indian Penal Code, 1860. This Court on December 17, 2019 granted pre-arrest protection to the applicants. This protection is in force.

3 Complainant Tajoddin K. Kalyani @ Shaikh instituted Special Civil Suit No.133 of 2001 in May, 2001 for declaration and partition of the properties, bearing Survey No.158/4B and 159/2B. He also sought a declaration that sale deed, dated 27th May, 1998 executed by his brother in favour of the applicants in respect of suit land 159/2B was null and void and not binding on them. The suit was decreed, whereunder, 35% undivided share was decreed to elder brother of the complainant; 35% to the complainant; 12.5% to the mother and 12.5% to the sister. The Trial Court vide judgment and decree of September, 2002 , declared the sale deed dated 27th May, 1998 was not binding on the complainant, his mother and sister to the extent of their share in the suit land 159/2B. Decree was

confirmed in appeal upto Apex Court. It is alleged in spite of the decree as stated above, applicants (purchasers of the subject land) developed the entire property admeasuring 2H and 2.5R and created third party rights therein. In the back-drop of these facts, application under Section 156(3) of the Code of Criminal Procedure, 1983 was filed. Whereafter the subject offence came to be registered against the applicants.

4 Indisputably, the decree passed in the Special Civil Suit No.133 of 2001 is pending for execution. It is not in dispute that the applicants have purchased undivided interest of the complainant's brother in the suit property. Therefore, even assuming applicants have sold out property in excess of their rights, the aggrieved complainant and family members may have to adopt appropriate proceedings to protect their interest in the suit property for which in my view their custodial interrogation is not required.

5 Mr. Kumbhakoni the learned counsel for the Intervenor has relied on the judgment of the Apex Court in the case of **T. Vengama Naidu v. T. Dora Swamy Naidu & Ors.** to contend that applicants had no right in the entire suit property, as against their limited interest therein. In the cited judgment, facts were different. Therein Power of Attorney executed in favour of the respondents, was cancelled. Yet on the strength of cancelled power of attorney, respondent sold the properties to the petitioner. Though the FIR was lodged by the petitioner therein, it was quashed by the High Court. Whereafter petitioner had filed criminal appeal before the Hon'ble Apex Court. In the said facts, the Apex Court has held that pending investigation, it can not be said that there were no ingredients of the offence in the FIR and this was civil dispute.

6 Here, the applicants are seeking pre-arrest bail and, therefore, the ratio in the judgment cited by Mr. Kumbhakoni is not applicable to the facts of the case.

7 Be that as it may, in consideration of the facts of the case stated above, in my view, custodial interrogation of the applicants will not further the prosecution case.

8 Application is allowed.

9 In the event of arrest of the applicants in Crime No.0759 of 2019 registered with Sadar Bazar Police Station, Solapur, they shall be released on executing PR bond for the sum of Rs.25,000/- each with one or more sureties in like sum.

10 The applicants shall furnish their permanent residential address and contact numbers to the Investigating Officer forthwith.

11 The applicants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

12 The applicants shall attend concerned police station as and when called and co-operate in the investigation.

13 The application is accordingly allowed and disposed of.

14 It is made clear that observations made here-in-above be construed as expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)