

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (ABA) No. 56 of 2021

(Sachin Ganesh Sarode and anr. ..vs.. The State of Maharashtra through P.S.O. Rajapeth, Amravati)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Anil S. Mardikar, Senior Advocate with Mr. Rushab Khemuka,
Advocate for the applicants
Mr. M. K. Pathan, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 26-02-2021

Heard.

2. At the outset, it would be necessary to make a reference to the order dated 15-2-2021 vide which I granted pre-arrest protection to applicant 1 Sachin Ganesh Sarode. I was not inclined to protect applicant 2 in view of the overwhelming material linking him with the crime. However, in view of the submission of the learned Senior Counsel Mr. Anil Mardikar that the applicant is aged 70 years and is ready to cooperate with the Investigating officer and that he may be extended interim pre-arrest protection subject to appropriate conditions, I granted pre-arrest protection. It would be necessary to reproduce following observations in the order dated 15-2-2021.

5. *Perusal of the material in the case diary would reveal that prima facie there is some material to link the applicant with the crime. Surendra Wamanrao who is the beneficiary of the transfer which occurred in the year 1989 was an employee of applicant 2. Surendra Wamanrao did not have the means to purchase the plot. According to Surendra Wamanrao, he attended the office of the Sub-Registrar of Documents at the request of his employer and that he knows nothing about the transaction much less about the identity of the seller. However, when Mr. Babarao Bijwe and Mr. Surendra Wamanrao were brought face to face, Surendra Wamanrao clearly stated that the person who executed the sale deed in his favour was not Mr. Babarao Bijwe.*

6. *In view of the prima facie material, at least qua applicant 2, I was initially inclined to reject the application inasmuch as at the first blush, I found that if custodial interrogation is not allowed, investigation may come to a grinding halt and would be rendered directionless in the absence of the police knowing the identity of the alleged impersonator. However, in view of the persistent submission of learned Senior Counsel Mr. Anil Mardikar that the 70 year old accused is ready to cooperate with the Investigating Officer and that rather than depriving him of his liberty in entirety, appropriate conditions may be imposed and interim pre-arrest protection may be extended, I have thought it appropriate to give an opportunity to applicant 2 to cooperate with the Investigating Officer. Needless to record the interim pre-arrest protection I propose to extend, would be revisited*

and either confirmed or withdrawn subject to the extent and nature of the cooperation.

7. Insofar as applicant 1 Sachin is concerned, he was a minor when the impersonation allegedly occurred. I do not find any reason to disallow his pre-arrest protection prayer.

8. The pre-arrest protection prayer of applicant 1 Sachin Ganesh Sarode is allowed subject to the condition that till filing of the charge-sheet, he shall attend the concerned police station as and when required. Insofar as applicant 2 Ramesh Wamanrao Sarode is concerned, he shall attend the concerned police station from 11.00 a.m. to 4.00 p.m. everyday with effect from 16-2-2021.

9. Since learned Additional Public Prosecutor Mr. Mehroz Pathan has submitted that custodial interrogation would be necessary to discover the relevant fact, namely the identity of the impersonator, it is directed that the period during which applicant 2 shall be available for interrogation shall be treated as deemed custody for the purpose of Section 27 of the Indian Evidence Act.

10. List this application for further consideration as regards applicant 2 Ramesh Wamanrao Sarode on 23-2-2021.

3. The Investigating Officer is personally present. On the instructions of the Investigating Officer, Mr. Mehroz Pathan, learned Additional Public Prosecutor states that applicant 2 Ramesh Sarode has not cooperated with the Investigating Officer. The learned

Senior Counsel Mr. Anil Mardikar would submit that the fact that the accused has not responded on the expected lines or as desired by the Investigating Officer, would not amount to non-cooperation. The submission, as a proposition, is unexceptionable. However, on perusal of the investigation papers and in particular, the recording of the interrogation, I am more than satisfied that the applicant 2 has extended no cooperation whatsoever to the Investigating Officer, with the result, that unless custodial interrogation is done, the entire investigation is likely to meet a dead end.

4. In my considered view, the material in the charge-sheet is more than sufficient, at least at this stage, to connect accused Ramesh Sarode with the crime. The sale deed is executed in the name of his employee, who did not have the means to purchase the land. More importantly, the employee in whose name the sale deed is executed, clearly states that he was asked to attend the office of the Sub-Registrar of Documents by Ramesh Sarode and that he knew nothing about the transaction. During the course of investigation, the real owner of the

plot and the employee, in whose name, the sale deed is registered were brought face to face. The employee categorically stated that he was not the person who executed the sale deed. Notably, while the sale deed which is allegedly fraudulent is executed on 11-12-1989, the mutation entry appears to have been taken on 4-7-1994 and it is apparent from the mutation record that the entry was taken surreptitiously and in a clandestine manner without following the provisions of the Maharashtra Land Revenue Code, 1966. The real owner whose name was deleted was not even aware.

5. Considering the cogent and ample incriminatory material against Ramesh Sarode, notwithstanding the fact that sale deed is executed years ago, the investigating agency cannot be deprived of the opportunity to arrest and custodially interrogating Ramesh Sarode. His case cannot be compared with applicant 1 Sachin Sarode in whose name the employee of Ramesh Sarode transferred the property vide sale deed dated 30-8-2002. Even if, it is assumed that applicant 1 Sachin Sarode is somehow and somewhere

involved, his custodial interrogation is not necessary. The same cannot be said as regards applicant 2 Ramesh Sarode who is giving evasive answers and refusing to cooperate with the Investigating officer. It is well settled that the quality of elicitation of material in custody is markedly different than the elicitation when the accused is protected. No case to exercise discretion is made out.

6. The application is dismissed as regards applicant 2 - Ramesh Wamanrao Sarode.

JUDGE

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