

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

CRIMINAL APPLICATION (ABA) NO.78 OF 2021

(Prashant Shivkumar Sahare Vs. State of Maharashtra thr. PSO PS Wathoda, Nagpur)

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

Court's or Judge's orders.

Mr. J.K. Matala, Advocate for Applicant.
Mr. S.S. Doifode, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 16th FEBRUARY, 2021.

Heard.

2. The applicant is apprehending arrest in Crime 354/2020 registered with Police Station, Wathoda, Nagpur, District Nagpur, for offences punishable under Sections 420, 467, 468, 471, 447, 385, 506 read with Section 34 of Indian Penal Code.

3. The applicant approached this Court seeking pre-arrest protection vide Criminal Application (ABA) 748/2020. The said application was rejected vide order dated 15.12.2020 observing that there is ample material in the charge-sheet to link the applicant with the crime and that the investigation is suffering since the applicant is absconding and is not available for custodial interrogation. While rejecting the earlier application, this Court scrutinized the material available in the case diary minutely and recorded reasons for the *prima facie* view that the applicant is not entitled to pre-arrest protection. This Court observed

thus:

4. According to the learned counsel for the applicant, the plot was owned by Uttam Bhajankar and the sale-deed executed in favour of Ashok Khattar is executed by two legal heirs namely Padma and Vishal, the widow and son of Uttam Bhajankar. I have perused the sale-deed. The market value of the plot is Rs. 73 lacs and odd. The plot is allegedly purchased for paltry consideration of Rs. 5 lacs and that too paid in cash. The statements of the two legal heirs, who are signatories, are recorded. The legal heirs have consistently stated that they were mislead into executing the document. The legal heirs have categorically denied receiving any amount and have stated that an impression was given that the boundary of an entirely different plot admeasuring 1500 sq.ft. allegedly sold by deceased Uttam Bhajankar to the father of co-accused Amrindarsingh Bagga, need correction.

5. The entire transaction is prima facie suspicious. Even de hors the statements of the legal heirs of Uttam Bhajankar., it is inexplicable that property worth at least Rs. 73 lacs would be sold for a paltry consideration of Rs. 5 lacs and that too consideration paid in cash. Notably, the document is executed after Mr. Tawarlal Chhabrani approached the police.

6. According to the learned counsel for the applicant, Prashant Sahare entered into an agreement to purchase the plot from Uttamrao Bhajankar in the year 1997. No document substantiating the submission is brought to my notice. My attention is invited to Sammatipatra (No objection) allegedly executed by two legal heirs in the year 2017. That document comprises three pages and legal heirs allegedly signed only on the last

page. There is nothing on the last page to link the document with the property in question. The legal heirs have denied executing any document in favour of Prashant Sahare much less document styled as Sammatipatra. This document is prima facie suspicious and the possibility that the signatures, if at all, the signatures are of the legal heirs, are obtained on one page and doctored pages are attached to the signature bearing page, cannot be ruled out. This off course is a matter of investigation. As of now, the investigation is suffering since the applicant is not available for custodial interrogation. I am more than satisfied that there is ample material in the charge-sheet to link the applicant with the alleged crime and that in the interest of fair and effective investigation, the police must have the opportunity of custodially interrogating the applicant in order to unearth the various facets of the crime.

4. Undeterred by the rejection of Criminal Application (ABA) 748/2020, the applicant has filed a successive application seeking pre-arrest protection.

5. I called upon the learned counsel appearing on behalf of the applicant to point out the change in circumstances as would warrant filing of successive application. The learned counsel submits that along with the earlier application certain material documents were not produced. The submission of the learned counsel that there is a change in circumstances is clearly untenable. While considering the entitlement to pre-arrest protection, the Court is not expected to look into the probable defence and it would suffice if on perusal of the material in the case diary, the Court is of the *prima facie* view that the

allegations are grave and that investigation shall suffer if the absconding accused is not arrested and custodially interrogated.

6. In my considered view, the applicant is abusing the process of law. The applicant is absconding and the investigation is likely to be rendered directionless unless the applicant is arrested and custodially interrogated.

7. While there cannot be any quarrel with the proposition that there is no bar to entertain a successive application for pre-arrest protection, the Apex Court has time and again emphasized that such application ought not to be entertained unless there is some material change, in contradistinction with a cosmetic change in circumstances. It would suffice if reference is made to the decision of the Apex Court in *G.R. Ananda Babu v. The State of Tamil Nadu & Anr.* [Criminal Appeal No.____ of 2021 (Arising out of SLP (Crl.) No.213 of 2021)] which observes thus:

As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No.2) is absconding and not cooperating with the investigation. The specious reason of change in circumstance cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.

8. The application is liable to be dismissed with exemplary cost.

9. The propensity to persist in filing successive applications, without any justification, is increasingly visible. Such sharp practices need to be dealt with iron hand.

10. The application is dismissed with cost of Rs.25,000/-.

11. The cost shall be deposited with the High Court Legal Services Sub-Committee, Nagpur, within fifteen days.

12. If the amount of Rs.25,000/- is not deposited, as directed, the said amount shall be recovered as arrears of land revenue.

13. A copy of this order shall be forwarded to the jurisdictional Court, the concerned Police Station and the Collector, Nagpur, within the next fifteen days.

JUDGE