

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

CRIMINAL APPLICATION (BA) NO. 244/2021

Vivekanand alias Vivek S/o Pandarinath Khobragade

-VERSUS-

State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri S. A. Chaudhari, Advocate for applicant.
Ms. N. P. Mehta, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.

DATE : 07.04. 2021.

Hearing was conducted through Video
Conferencing.

2. Applicant was arrested in Crime No. 539/2020 registered at Gadchiroli Police Station for the offence punishable under Sections 425, 417, 420, 468, 471 and 473 of the Indian Penal Code. The applicant prayed bail by stating that the crime was registered at the instance of private complaint filed by a stranger namely Akash who has no concerned with the transaction. Moreover, it is contended that the complainant has suppressed the material information while filing private complaint. According to applicant, the allegation pertains to civil dispute and the Police

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have already seized alleged tented documents. Having regard to the fact, he prayed for grant of bail.

3. The State resisted bail by filing reply-affidavit. It is contended that on the basis of private complaint, the concerned Magistrate has issued direction in terms of Section 156(3) of the Code of Criminal Procedure to conduct investigation. It is the prosecution case that one Nanaji and Gopal have executed power of attorney in the name of applicant. Though Nanaji died, applicant used power of attorney and executed several agreement to sale and received huge amount. Moreover, it is alleged that without seeking prior permission of Government, applicant entered into executing agreements and thus, committed offence.

4. It reveals that certain piece of land was Class-II land which was assigned on patta basis to the original holder. Some of the portion of said land was acquired by Government. Applicant got executed lease -deed from the holders namely Gopal and Nanaji. So also, a power of attorney was executed in his favour. Applicant prepared lay-out over the said land and executing several agreement without seeking prior permission from competent authority. Apparently, the dispute

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appears to be of civil nature. The legality of agreement is a matter of question to be decided by competent Court. Applicant would submit that after demise of Nanaji, fresh power of attorney was executed. It is a matter to be adjudicated by Civil Court whether on the basis of questioned agreement, any right is created in favour of purchaser. Execution of agreement without seeking requisite permission cannot prima facie constitute an offence unless dishonest intention has been demonstrated. It is to be noted that the person in whose favour agreements are executed, have not put any grievance regarding the transaction. Already applicant has faced custodial interrogation and is in Jail. Most of the documents have been seized by Police. The investigation appears to be practically complete. Having regard to the nature of accusation, applicant has made out a case for grant of bail on imposing certain conditions. In that view, following order:-

(I) Application is allowed.

(II) Applicant – Vivekanand alias Vivek S/o Pandarinath be released on bail on his furnishing P.R. Bond of Rs. 25,000/- with one or two sureties of the like amount.

(III) Applicant shall not directly or indirectly make any inducement, threat or promise

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to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

(IV) Applicant shall provide his residential address and cell number to concerned Investigating Officer and shall not change his place of residence without prior intimation to the concerned Investigating Officer.

JUDGE

Gohane.