

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

CRIMINAL APPLICATION (ABA) NO.259 OF 2021

(Vinod s/o Damodhar Devghare Vs. State of Maharashtra thr. PSO PS Kalamna,
Nagpur)

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

Court's or Judge's orders.

Mr. Prakash Naidu, Advocate for Applicant.
Mr. M.K. Pathan, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 23rd APRIL, 2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard Mr. Prakash Naidu, the learned counsel for the applicant.

3. The applicant is apprehending arrest in Crime 890/2020 registered with the Police Station Kalamna, Nagpur for offences punishable under Sections 419, 420, 465, 467, 468, 475 read with Section 34 of the Indian Penal Code, which crime is registered on the basis of report lodged by Mr. Shreeram Kumbhare who is the owner of Plot 52 situated at Mouza Pardi.

4. The applicant moved an earlier application (ABA) 54/2021, which came to be rejected by this Court

vide order dated 05.02.2021.

5. The order of rejection was passed after hearing the learned counsel at length and after perusal of the investigation papers. This Court noted that the submission of the applicant that he himself is a victim, is belied by the material discernible from the investigation papers. It would be relevant to reproduce the observations in paragraphs 7 to 10 of the order of rejection dated 05.02.2021, which read thus:

7] The allegation is that the plot was sold on the basis of impersonation and forged documents and the consideration shown in the sale-deed was deposited in an account fraudulently upon in the name of Mr. Shriram Kumbhare, again on the basis of forged document.

8] The most incriminating material against the applicant is that he is not only obtained the sale-deed, he mortgaged the same plot in favour of as many as five different banks to wit Axis bank, Central Urban Credit Co-operative Bank, Andhra Bank, Shriram City Union Bank. The applicant submitted the same document, offered the same plot as security to at least five different financial institutions. This in itself strongly indicates the complicity of the applicant in the fraud. The learned Sessions Judge notes in the order of rejection of pre-arrest protection that the learned counsel Mr. Masureke could not satisfy the Court as to how the applicant availed the loan from five different banks on the basis of the same property.

9] Custodial interrogation is absolutely necessary to unravel the various aspects of the crime.

10] Even otherwise, considering the nature of the crime, the modus-operandi, the impersonation and forgery and that five financial institutions are apparently cheated since loans are obtained by the applicant on the basis of same property, no discretion can be exercised.

6. While there is no inflexible rule or principle that a successive application is not maintainable, it is well settled that unless there is such change in circumstances, as would take away the basis of the earlier rejection, a successive application is not maintainable. It is not even the case of the applicant that there is such change in circumstances as would warrant a successive application.

7. The submission of the learned counsel Mr. Prakash Naidu that when the earlier application was argued, certain facts were not brought to the notice of the Court, is noted only for rejection. Pertinently, this Court had the benefit of perusing the investigation papers and it was after noting the material that the pre-arrest protection was denied. It is also submitted by Mr. Prakash Naidu that the applicant is ready to deposit the amount of loan obtained from as many as five financial institutions. I am afraid, the submission cannot be countenanced. The *modus operandi* reveals an extremely serious offence and willingness to deposit the loan amount, belated as the willingness is,

cannot be a factor in favour of the applicant. It would be unfair to deprive the Investigating Officer the opportunity of arresting and custodially interrogating the applicant. In the absence of such opportunity, the investigation will be rendered directionless.

8. The application is dismissed.

JUDGE

NSN