

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

CRIMINAL APPLICATION (APPLN) NO. 33 OF 2021

Abrar s/o Asif Khan

..vs..

Mehmood Khan s/o Rahim Khan and anr.

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

Court's or Judge's orders

Mrs. R.K. Nankani, Advocate for applicant.
Shri S.J. Sheikh, Advocate for non-applicant no.1.
Shri S.A. Ashirgade, A.P.P. for non-applicant no.2/State.

CORAM : VINAY JOSHI, J.

DATED : 03/09/2021

This is an application for cancellation of pre-arrest bail granted by the Sessions Court in Misc. Criminal Application No.970 of 2021 vide its' order dated 24.03.2020. The bail is sought to be cancelled by contending that the Trial Court has wrongly exercised its discretion in granting pre-arrest protection to respondent no.1. Precisely, the impugned order is challenged on merits.

2. At the instance of report dated 16.03.2021 lodged by the applicant (informant-Abrar Khan), the Police have registered a crime vide C.R. No.105 of 2021 for the offence punishable under Sections 406 and 420 of the Indian Penal Code. It is the prosecution case that respondent no.1/accused was indulging into the real estate business. Respondent no.1 posing himself to be the owner of larger piece of

land, agreed to sell a plot ad-measuring 1200 sq.ft. to the applicant. During the period from 2006 to 2008, the applicant (purchaser) has paid entire agreed consideration of Rs.42,000/-, however, sale-deed has not been executed. It is the informants' case that on inquiry, he learnt that, respondent no.1 was no way concerned with the land, hence the report of cheating and criminal breach of trust, was lodged.

3. Respondent no.1(accused) approached to the Court of Sessions for grant of pre-arrest bail in terms of Section 438 of the Code of Criminal Procedure. The Trial Court on assessing the facts, held that dispute was of civil nature, there is no necessity for custodial interrogation hence, accordingly, granted pre-arrest protection.

4. Heard both sides, gone through the impugned order and case papers. It is the applicants' grievance that despite paying entire consideration amount prior to the year 2009, sale-deed has not been executed. It is also alleged that respondent no. 1 was not the owner of the property still he entered into the transaction.

5. The Trial Court noted that respondent no.1 has purchased the said land under registered sale-deed from erstwhile owner. Police paper also contains a copy of registered sale-deed dated 26.08.2003. It is the stand of respondent no.1 that the concerned land

was non agriculture land and thus, unless layout gets sanction from the Nagpur Improvement Trust, sale-deed cannot be executed. He also stated that he is ready and willing to execute the sale-deed, but the applicant is not ready to pay development charges.

6. The Trial Court has rightly considered all the aspects while noting that the dispute was of civil nature. Though the applicant has pointed that similar type of other complaints are filed against respondent no.1, however, till date offence was not registered. The case depends upon documentary evidence as well as having civil flavour. I do not see any error committed by the Trial Court while granting pre-arrest protection to respondent no.1. In view of that, the application being devoid of merit, stands dismissed.

JUDGE

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