

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL APPLICATION (ABA) NO. 339 OF 2021

Sadan s/o Narayan Yadav

..vs..

State of Maharashtra, thr. P.S.O.

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

Court's or Judge's orders

Shri Anand Jaiswal, Senior Advocate with Shri V.K. Kolte,
Advocate for applicant.
Shri I.J. Damle, A.P.P. for non-applicant/State.
Shri Prakash Naidu, Advocate (Assisting prosecution).

CORAM : VINAY JOSHI, J.

DATED : 06/09/2021

In anticipation of arrest in Crime No.31 of 2021 registered with Beltarodi Police Station, Nagpur City, District Nagpur for the offence punishable under Section 420 of the Indian Penal Code, the applicant is seeking for pre-arrest bail.

2. Besides usual grounds, it is canvassed that there is considerable delay in lodgment of First Information Report. The co- owners did not made any grievance about the alienation's entered by the applicant. The entire transaction is purely of civil nature, hence there is no need of custodial interrogation. Learned A.P.P. appearing for the non-applicant/State resisted bail by filing reply-affidavit. The informant also appeared as an intervenor and filed reply in resistance.

3. It is the prosecution case that the informant's predecessor were the original owner of larger piece of land situated at Mouza Somalwada bearing Khasra No.80/2, ad-measuring 7.35 acres. The applicant is the President of the Rachna Co-operative Housing Society. The informants' predecessor entered into an agreement to sell dated 20.04.1987, under which the entire land ad-measuring 7.35 acres was agreed to be sold to the applicants' Co-operative Society. Amount of consideration along with terms of payment were mutually fixed. The agreement was revived in the year 1989 with certain modification. Thereafter only one acre of land was sold to the Society vide sale-deed dated 12.04.1989. Though Society was permitted to prepare lay-out plan over the entire land, however, the Society was specifically restrained from alienating plots till the execution of sale-deed. It is alleged that despite ownership the Society sold total 97 plots to different persons by preparing lay-out over entire land. The applicant with deceitful intent, dishonestly misled plot purchasers and owners hence, the offence of cheating.

4. There is no dispute that under two agreements, the applicant in the capacity of the President of Rachna Co-operative Housing Society, has agreed to purchase larger piece of land ad-measuring 7.35 acres of Mouza Somalwada. Admittedly, till date, sale-deed of entire plot has not

been executed in favour of the Society. Under sale-deed dated 12.04.1989, only 1.00 acre of land was sold to the Society. It is a matter of record that in the year 1990 itself, the Society has filed a suit (Civil Suit No.688 of 1990) against the owner, for specific performance of contract, which is pending. Moreover, due to *inter se* dispute, owners have filed Civil Suit for partition and separate possession bearing Civil Suit No.681 of 2003. In the said suit, a relief was also claimed for cancellation of both agreements and all sale transactions, entered by the Society in favour of different plot purchasers.

5. It is submitted on behalf of the applicant that though the transaction was very old i.e. of the year 1989 and Civil Suit is pending from the year 1990, the report is lodged after 20 years. It is submitted that the entire transaction is predominantly of a civil nature. Moreover, it is contended that besides the informant neither any of the co-owner nor the plot purchasers made any grievance against the applicant.

6. Both agreements to sell and sale-deed of 1.00 acre of land, is tendered on record for perusal. It is apparent that, despite purchasing only 1.00 acre of land, the society has prepared a layout over entire 7.35 acres of land and sold 97 plots to different purchasers. The applicant has admitted in his applications itself that up till now Society has sold 81

plots to different purchasers. Deceitful intention of the applicant from his act of selling plots without ownership, is *prima facie* evident. The Society was well aware that their suit for specific performance is pending, meaning thereby they were not the owner, despite this position they had gone on selling the plots spread over the entire area. The informant has produced a copy of sale-deed dated 08.12.2020 executed by the applicant in favour of one Ratna Mishra on exemplary basis to show that still Society is selling the plots. It is brought to the notice that when the Society has applied to the Nagpur Improvement Trust for sanction of layout plan, the owner filed Writ Petition No.964 of 2006 in this Court. In said Writ Petition, Nagpur Improvement Trust had made a statement that they would not regularize the plots, on which the said petition was disposed of.

7. The agreement to sell bears a specific clause that, the applicant-Society cannot sale plots till the execution of sale-deed. The Society was well aware that they were not the owner of entire land as their suit for specific performance, was pending. Despite such position, for valuable consideration, plots were sold to several persons inviting criminal action. Report of one of the co-owner is sufficient for which it is not necessary that all co-owners should file a police report. As well as it is not necessary that the grievance should be made by the aggrieved plot holders also.

The legality of sale-deeds executed by the applicant is a question to be decided by the Civil Court. The applicant can not simply say that it is civil dispute and at the most sale-deeds would be set aside. Civil consequence is apart, but *prima facie* the act of selling land which was knowingly owned by others attracts the offence of cheating.

8. It is submitted that though the applicant has purchased only 1.00 acre of land, but he misrepresented Nagpur Improvement Trust for sanctioning layout over entire land ad-measuring 7.35 acres. The non-applicant would submit that the Society was de-registered in the year 1988 and during that time applicant misrepresenting himself as a President, executed documents by suppression of facts. The matter requires thorough investigation. The applicant is the President of the Society, who is party to both agreements as well as Civil Suits. The applicants' custodial interrogation is necessary to obtain record of Society, its' account details and the proposal made by the Society for approval of layout plan. Delayed First Information Report would not alleviate the seriousness of offence. The cause is recurring as till the year 2020 plots are being sold. Now a days such transactions of selling plots to poor persons without title are at rise. Not only, applicant has defrauded original owner but, hundreds of purchasers. The act of the applicant though attract

civil action but criminal liability large wit. Deceitful intention and misrepresentation, is *prima facie* evident from the facts itself, therefore, this is not a fit case to grant pre-arrest protection, hence, the application is rejected.

JUDGE

Trupti