

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

CRIMINAL APPLICATION (APL) NO. 440 OF 2020

Girish S/o. Padmakar Girdhar,
Aged about 32 years, Occ. Business,
R/o. Plot no.82, Sahakar Nagar,
Khamla Road, Nagpur.

.....APPLICANT

-----VERSUS-----

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Pachpaoli,
Nagpur, Tah. & Distt. Nagpur.

2. Ravishankar @ Purushottam Sahare,
Aged about 27 years,
R/o. MIG Qtr. No.2/2, Vaishali Nagar,
C/o. Dr. Riyaz Ahmed,
P S. Pachpaoli, Nagpur.

.....NON-APPLICANTS

Shri Bhushan Dafle, Advocate for the Applicant.
Shri V. A. Thakare, Additional Public Prosecutor for the Non-applicant No.1.
Shri M. M. Kalar, Advocate for the Non-applicant No.2.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 31.08.2021.

JUDGMENT : (PER AMIT B. BORKAR, J.)

1. Heard.

2. Rule. Rule is made returnable forthwith.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicant is challenging registration of the

First Information Report No.381/2020 dated 14.07.2020 registered with the non-applicant No.1 - Police Station against the applicant and others for the offences punishable under Sections 420, 448, 467, 468, 471 and 120-B of the Indian Penal Code.

4. The First Information Report came to be registered against the applicant and others with the accusations that agreement to sale dated 25.05.2019 for amount of Rs.33,00,000/- was executed by Smt. Vasudha Vasudeo Rupde in favour of the non-applicant No.2. The remaining amount was to be paid at the time of registration of sale-deed i.e. on 15.10.2019. Smt. Rupde died on 25.09.2019 and therefore sale-deed could not be executed. When the non-applicant No.2 went to visit the house property owned by Smt. Rupde on 29.11.2019, the non-applicant No.2 was shocked to see accused No.3 - Nilima Jaiswal and other unknown lady in the house. On enquiry, it was told that the accused No.3 has taken possession of the said property. It was told by the applicant and the accused No.3 – Nilima Jaiswal that deceased Smt. Rupde executed agreement to sale in their favour on 02.04.2019 for amount of Rs.28,00,000/- and had delivered possession. The non-applicant No.2 therefore, lodged the First Information Report against the applicant and others.

5. The applicant has challenged registration of the First Information Report by way of filing present application. On 07.08.2020, this Court issued notice to the non-applicants. The non-applicant No.1 in pursuance of the order passed by this Court filed reply dated 19.10.2020. It is stated in the reply that the Investigating Agency has recorded statement of four witnesses which show that the applicant has played vital role in commission of the offences alleged against him. It is stated that the Investigating Officer has seized mobile phone of the accused – Nilima Jaiswal and has also obtained certain documents having signature of the deceased Smt. Rupde to verify the genuineness of the signature. It is also stated that the applicant is having criminal antecedent and the First Information Report No.169/2020 is also registered against the applicant.

6. We have heard the learned Advocates for the parties. With the assistance of the learned Advocates for the parties, we have carefully perused the First Information Report. On perusal of the First Information Report and the material produced by the non-applicant No.2, it appears that the applicant herein had filed Criminal Application (ABA) No. 106/2021. This Court while rejecting the said application in paragraph No.5, 6 and 7 has observed as under :

“5. There is more than ample material on record to link the applicant with the crime. The Investigating Officer has obtained the government hand-writing experts opinion which is that the documents on the basis of which the applicant and the co-accused are asserting title, are forged and fabricated and were not executed by deceased Mr. Vasudha Rupde. The statements of witnesses show that the applicant and the other co-accused have formed a crime syndicate and are involved in property grabbing.

6. One of the witnesses, who is a relative of the deceased Mrs. Vasudha Rupde, has graphically described the attempt of the applicant and the other members of the crime syndicate to forcibly evict tenant from a property. The applicant is also facing similar prosecution vide Crime 169/2020.

7. In my considered view, the applicant has not made out any case for exercise of discretion. The attempt to grab property on the basis of forged and fabricated document does not appear to be an isolated incident. There appears to be a crime syndicate which is actively involved in such offences. It would be next to impossible for the Investigating Agency to unearth the various facets of the crime and the activities of the crime syndicate, if the Investigating Agency is deprived of the opportunity of arresting and custodially interrogating the applicant. Considering the propensity to indulge in crime, the possibility of the applicant intimidating the witnesses, cannot be ruled out.”

7. On careful consideration of the First Information Report, it appears that the applicant along with other accused have illegally taken possession of the property in respect of which an agreement to sale was executed in favour of the non-applicant No.2. *Prima facie*, the allegations against the applicant is that the applicant along with other accused have prepared forged

documents and forged signature of the deceased Smt. Vasudha Rupde and on the basis of said documents has taken possession of the property in dispute.

8. We are of the view that for the purpose of quashing the First Information Report, it is necessary to consider whether the allegations in the First Information Report *prima facie* make out an offence or not. In our opinion, it is not necessary to scrutinise the allegations for the purpose of deciding whether such allegations are to be accepted in the trial. Any action by way of quashing the First Information Report is an action to be taken at the threshold before evidence are led in support of the First Information Report. It is well settled that the inherent power under Section 482 of the Code of Criminal Procedure of this Court should not be exercised to stifle a legitimate prosecution and should be exercise sparingly with great care and caution.

9. In our considered view, the allegations made against the applicant along with the observations made by this Court while rejecting anticipatory bail application, require that the complete investigation in relation to the offences against the applicant is necessary. At this stage, it is not possible to conclude that the material placed on record taken on its face value makes out no case for the offences under Sections 420, 448, 467, 468, 471 and

120-B of the Indian Penal Code. Taking over all view of the matter and the material placed on record, we are satisfied that this is not a fit case to exercise power under Section 482 of the Code of Criminal Procedure.

10. Hence, Criminal Application is dismissed.

11. Rule is discharged. Pending application(s), if any, stand(s) disposed of.

JUDGE

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