

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

CRIMINAL APPLICATION (APPLN) NO. 56/2020

(Ashok S/o Shivnarayan Raktade Vs. The State of Maharashtra & ors.)

with

CRIMINAL APPLICATION (APPLN) NO. 22/2021

(Ashok S/o Shivnarayan Raktade Vs. The State of Maharashtra & anr.)

with

CRIMINAL APPLICATION (APPLN) NO. 47/2020

(Ashok S/o Shivnarayan Raktade Vs. The State of Maharashtra & ors.)

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

Court's or Judge's orders

APPLN NO. 56/2020

Shri Tejas Deshpande, Advocate for the applicant.

Shri A. R. Chutke, APP for non-applicant No.1/State

Shri A. V. Bhide, Advocate for non-applicant Nos. 2 and 3.

APPLN NO. 22/2021

Shri Tejas Deshpande, Advocate for the applicant.

Shri A. R. Chutke, APP for non-applicant No.1/State

Shri C. R. Sharma, Advocate for non-applicant No. 2.

APPLN NO. 47/2021

Shri Tejas Deshpande, Advocate for the applicant.

Shri A. R. Chutke, APP for non-applicant No.1/State

Ms. Falguni Badani Advocate h/f Shri S. V. Sirpurkar, for non-applicant Nos. 2 to 4.

CORAM : VINAY JOSHI, J.

DATED : 22.11.2021.

Heard

2. These three applications are arising out of Crime No. 89/2019 registered with Police Station Khamgaon (City), District Buldhana for offence punishable under Sections 406, 420 read with Section 34, Sections 120-B and 504 of the Indian Penal Code. Original informant namely Ashok Raktade has filed these three applications seeking cancellation of pre-arrest bail granted by the Trial Court. Precisely, in Criminal Application (APPLN) No.

47/2020 informant seeks for cancellation of pre-arrest protection granted to non-applicants Shailendri Agrawal, Atul Agrawal and Achal Agrawal by the Sessions Court in ABA No. 323/2018. Likewise, applicant Ashok Raktade seeks for cancellation of pre-arrest bail granted to non-applicants Samir Sancheti, Tushar Shah and Manoj Shah by the Sessions Court vide common order dated 06.06.2019 passed in ABA Nos. 59/2019 and 60/2019.

3. The facts of the case can be briefly stated that non-applicant Shailendri Agrawal was the owner of piece of land bearing Plot No. 2 out of Survey No. 39, which she sold under the registered sale-deed dated 23.03.1987 to one Rajesh Jangid. Latter on, non-applicant Shailendri despite earlier sale-deed, has re-sold the same piece of land i.e. Plot No. 2 to the informant Ashok Raktade vide sale-deed dated 26.09.2014 for valuable consideration. It is alleged that non-applicants Atul Agrawal and Achal Agrawal who are the sons of Shailendri (original owner) assisted their mother in sale transaction. Likewise, non-applicants Tushar Shah and Manoj Shah facilitated the transaction by entering into *Isarpawati* (agreement) in favour of the Ashok Raktade on the instructions of owner Shailendri. It is stated that non-applicant Samir Sancheti took part in the transaction by way of showing concerned plot to Ashok Raktade.

4. Learned counsel for the applicant (informant) would submit that Shailendri though already sold her plot vide registered sale-deed dated 23.03.1987 to the third party, she ventured into transaction of re-selling the same piece of land to the informant on 26.09.2014 for

consideration. Therefore, according to him, the nature of transaction itself shows the intention to deceive since inception.

5. As regards to the non-applicants Tushar Shah and Manoj Shah are concerned, admittedly, they had neither executed sale-deed nor remained as a witness to the disputed sale-deed. Though informant stated that Tushar Shah and Manoj Shah had allegedly executed *Isarpawati* (agreement), no such document is produced to support the said contention. Besides that, informant Ashok Raktade had given in writing that since Manoj Shah, Tushar Shah and Samir Sancheti were merely present at the time of transaction, due to misunderstanding, he made them accused in the report. Moreover, he gave in writing that he had no grievance against these three persons. Prima facie, it is evident from the said writing which is not denied that, at the most role of them was of just mere presence and nothing beyond that. Moreover, informant Ashok Raktade conceded that he has no grievance against them. Hence, there is no substance in the contention of seeking cancellation of bail of non-applicants namely Tushar Shah, Manoj Shah and Samir Sancheti.

6. It takes me to the vital aspect which pertains to grant of pre-arrest bail to the original owner Shailendri and her two sons by the Trial Court vide order dated 13.11.2018. It is to be noted that the informant had purchased the plot of land on 26.09.2014 from Shailendri. Thereafter, he received a legal notice dated 01.08.2016 from erstwhile owner Rajesh Jangid stating that the plot has already been sold to him by Shailendri. Knowing the

said fact, the informant has perhaps asked Shailendri about the things on which immediately, she along with her two sons approached to the Sessions Court for grant of pre-arrest bail vide ABA No. 323/2018. When they have approached to the Sessions Court, the informant had even not lodged report with the Police. The Trial Court took said fact into consideration and by accepting their apprehension has simply allowed the application without assigning a single reason. In-fact, at that stage, nothing was before the Trial Court to consider on merits, as till that time, FIR was not filed. In all fairness, the Trial Court ought to have granted them limited protection till filing of FIR (First Information Report), however granted blanket protection.

7. Be that as it may, the impugned order is without any reason. The factual aspect is not at all considered while granting pre-arrest protection which would remain in force till conclusion of trial as per the settled legal position. Learned counsel appearing for these non-applicants submitted that the case is based on the documents and more particularly non-applicant Shailendri being a lady of advance age, custodial interrogation is not necessary. Certainly, she can make these submissions to the Sessions Court. At present, the prima facie, it is evident from two registered sale-deeds that Shailendri had executed a sale-deed in favour of informant without title that too with a knowledge that she had already sold the said property to the third party. The stand taken by the learned counsel appearing for Shailendri about denial first sale-deed, prima facie does not appeal because in that case she would have taken either civil or criminal action

against first purchaser Rajesh Jangid. Prominently, the earlier order was without any material passed prior to lodgement of FIR which requires consideration on its own merits. On any count, said order is not sustainable in law.

8. Needless to say that, the above observations are made only to the extent of deciding these three applications which has no impact on the merits of application which would be filed by Shailendri and her two sons for pre-arrest bail. The non-applicants are at liberty to approach to the Sessions Court for pre-arrest bail which the Trial Court shall decide on its own merits expeditiously. In view of that, following order:-

- (I) Criminal Application (APPLN) Nos, 56/2020 and 22/2021 stand rejected.
- (II) Criminal Application (APPLN) No. 47/2000 stands allowed.
- (III) Impugned order granting pre-arrest protection to Shailendri W/o Shriram Agrawal, Atul S/o Shriram Agrawal and Achal S/o Shriram Agrawal by the Trial Court in ABA No.323/2018 is hereby quashed and set aside.
- (IV) The order of pre-arrest bail granted by the Trial Court in ABA No. 323/2018 vide order dated 13.11.2018 would remain in force for the period of two weeks from today.

JUDGE