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

CRIMINAL APPLICATION [ABA] NO. 436/2019.

Yashwant Madhavrao Ingle.
-VERSUS-
State of Maharashtra, through PSO Ambazari, Nagpur.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri P.S. Wathore, Advocate for the Applicant.
Shri M.J. Khan, A.P.P. for the Non-applicant – State.
S/Shri N.B. Jawade and D.B. Bhowate, Advocates for Intervenors.

CORAM : VINAY JOSHI, J.
DATE : AUGUST 13, 2021.

Heard learned Counsel for the parties.

2. In anticipation of arrest in Crime No.174/2019 registered with Ambazari Police Station, Nagpur for offence punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code, the applicant seeks pre-arrest protection by claiming innocence and false implication.

3. It is contended that the applicant never intended to cheat the informant or other plot owners/holders. He had already executed sale deeds in favour of the plot holders as

well as, possession was delivered to them. It is argued that though mistakenly the entire larger piece of land was mortgaged with the Bank, however, by making correction deed, the plots which were already sold to the informant and others, were excluded. Moreover, it is submitted that the mortgagee Bank has already issued letters to the plot holders about release of their respective plots. Besides that, it is contended that the matter largely depends upon the documentary evidence. This Court has granted pre-arrest protection prior to two years and the applicant has fully cooperated with the investigating agency.

4. The State has resisted the bail by filing reply affidavit. It is contended that the applicant – a developer, has cheated several plot holders. Though it was within his knowledge that he has sold all the plots, still by deceitful means, he mortgaged larger piece of land by deceiving the plot owners. Moreover, the applicant has sold the same plots to different person, which were already sold. It is submitted that there are other affected persons who are coming forward with the same grievance of cheating. The corrected mortgage deed is illegal, as those plots were already sold to various

purchasers. The applicant has obtained huge loan of Rs.4 Crores from the Bank by deceiving the Bank by creating false mortgage. The investigation is at preliminary stage. There are criminal antecedents, hence, the applicant does not deserves for bail.

5. The learned Counsel for intervenors have advanced some what similar argument which is put forth by the learned A.P.P. They have produced certain documents to support the resistance.

6. At the instance of a report dated 26.04.2019 lodged by one of the plot holder namely Shri Pise, the aforesaid crime came to be registered. The applicant – a developer was owner of land consisting several survey numbers situated at Mouza Peotha and Mouza Banuwadi. He has obtained non-agricultural permission from the Collector, Nagpur in the year 2004. The applicant has prepared a layout plan and sold those plots to hundreds of persons without getting sanction of the layout from the Town Planning Authority. The plot owners/holders names were not mutated into the revenue records. It is alleged that the applicant purposefully had not mutated names of plot

owners, but, kept the revenue record in his own name. On the basis of the said revenue record, the applicant had obtained a loan of Rs.4 Crores from Pusad Urban Cooperative Bank Limited by mortgaging the entire large piece of land which was already sold to several persons. Thus, it is the grievance that like informant, hundreds of plot owners were cheated.

7. It is not in dispute that the applicant – developer was owner of larger piece of land situated in two villages i.e. Mouza Peotha and Mouza Banuwadi, consisting of several survey numbers. He has prepared a private layout laying hundreds of plots. From the year 2005 onwards, the applicant sold all plots to various persons. It is the case of the applicant that he has sold the plots at a very cheap rate, obviously to the weaker section of the society. It is not in dispute that the applicant by executing a registered mortgage deed dated 11.01.2017, availed a loan of Rs.4 Crores from Pusad Urban Cooperative Bank Ltd. Undisputedly the applicant has mortgaged all the survey numbers of village Mouza Peotha and Mouza Banuwadi with the creditor Bank towards security. The learned Counsel for the applicant

submitted that he was unaware about the creation of mortgage of entire land. According to the applicant, he has kept some plots with him which he was intending to mortgage, however, the Bank authorities got executed mortgage of entire land. Prima facie the said submission is wholly unjustifiable because the applicant, a developer himself has executed the registered mortgage deed by specifically describing entire land along with survey numbers of both villages.

8. It is argued that when the applicant came to know that he has mistakenly mortgaged the entire property, therefore, he has executed a correction deed on 05.04.2019, by which instead of entire property some 147 plots were specifically mortgaged.

9. The learned Counsel appearing for intervenors have pointed out that again the applicant has committed a fraud since those 147 plots were also sold to different persons. They have produced detail list stating names of purchasers along with the dates of sale deed. Though a faint attempt was made to state that still the applicant possess some portion of the land, however, when it was asked

whether the applicant is ready to file affidavit to that effect, it was not responded.

10. It is a matter of record that the applicant has sold the entire property by carving a layout and later on has mortgaged the entire property with the Bank. Certainly the mortgagee Bank would be an aggrieved party, since the applicant has mortgaged the property of which he was not owner. However, it reveals that the Bank authority have got executed the correction deed but, prima facie it shows that the said property was also already sold. There is a serious question as to how without verification of title the Bank has got executed the mortgage deed, while disbursing huge loan amount.

13. The learned A.P.P. has pointed out that since the loan raised by the applicant was declared as non performing asset (NPA), the Bank has put the entire property for auction. When the plot owners came across the public auction notice, they had approached the Debt Recovery Tribunal for redressal of their grievance. According to the plot owners, at that time only they realized that they have been cheated since despite executing sale deed in their favour, the property was

mortgaged by taking disadvantage that their names were not mutated into the revenue records.

12. The learned Counsel for the applicant has argued that in reality the applicant has been cheated by one group at whose instance he has raised loan for the purpose of business. However, that aspect is not relevant. The applicant has produced letters issued by the Bank to some of the plot owners informing that the Bank has released their plots. Learned Counsel for intervenors have pointed certain correspondence to show that the revenue record was not corrected. On the contrary, the revenue Authorities have questioned the Bank as to under which provision such record can be corrected.

13. The Bank has not canceled the mortgage deed. Apparently there is a clog on the title of hundreds of plot owners. It is apparent that the applicant knowingly entered into the transaction of sale and thereafter obtained huge loan by putting property rights of several at stake. Moreover, not only the applicant has availed the loan, but, there was double sale of several plots. Certainly the matter is of high magnitude. It is informed that near about 600 plots were

sold without getting layout sanctioned from the Town Planning Department/Authority. The applicants' act of mortgaging the property, which was already sold prima facie shows his intention to deceive. The learned A.P.P. has pointed that several plot owners are still coming forward with their grievance. It is also informed that during the pendency of this application, the applicant has pressurized some of the plot owners who have filed written complaints. Moreover, it is alleged that the applicant has not responded to the notice issued by the investigating officer to produce certain documents.

14. Prima facie there is overwhelming material against the applicant about of his active involvement. The interest of hundreds of plot owners who have invested their hard earned money is at stake. The matter requires thorough investigation. Therefore, this is not a fit case to exercise judicial discretion to grant pre-arrest protection, hence, Criminal Application is rejected.

JUDGE

Rgd.