

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

**CRIMINAL APPLICATION (ABA) 790 OF 2020**

Vivekanand Pandharinath Khobragade

**V/s**

State of Maharashtra P.S.O. Gadchiroli.

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

*Court's or Judge's orders.*

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Mr. M.P. Khajanchi, counsel for applicant.

Mr. N.R. Rode, Additional Public Prosecutor for non-applicant/State.

**CORAM: ROHIT B. DEO, J.**

**DATE: 02/02/2021.**

1. The applicant is apprehending arrest in Crime 539/2020 registered with Police Station Gadchiroli for the offences punishable under Sections 425, 417, 420, 468, 471 and 473 of the Indian Penal Code.

2. The crime is registered pursuant to the order dated 10.11.2020 in Misc. Criminal Application 29/2020 rendered by the Judicial Magistrate First Class, Gadchiroli, the operative portion of which reads thus:-

*"1. The complaint be sent to the Police Station officer, Gadchiroli for the investigation under Section-156(3) of Code of Criminal Procedure, 1973.*

*2. The application is disposed".*

3. The application under Section 156 (3) of the Code of Criminal Procedure, 1973 ('Code') was preferred by Mr. Akash Khobragade, the substratum

of which is that the plots were carved out of land survey 60 and sold to gullible persons, although the said land, which was a Class-II occupancy, was confiscated by the Government way back in 2007.

4. I have perused the material in the case diary which is collected during the course of the investigation. The material in the case diary not only substantiates the allegations in the application under Section 156 (3) of the Code, the material goes a step ahead. I am conscious of the position of law that in exercise of jurisdiction under Section 438 of the Code, a detailed and minute consideration of the material on record must be avoided. However, since the articulation of the Hon'ble Apex Court, *inter-alia* in the case of **Kalyan Chandra Sarkar V/s Rajesh Ranjan alias Pappu Yadav and another reported in (2004) 7 SCC 528** obligates recording of reasons, howsoever, briefly, some reference to the material in the case diary is inevitable .

5. The two facts, which are indubitable, may now be noted. The applicant is not, and indeed, was not the owner of the land sold. According to the applicant, Mr Nanaji Yogaji Khobragade and Mr Gopal Yogaji Khobragade executed a power of attorney in his favour on 15.02.2002.

6. The other irrefutable fact is that Mr. Nanaji

Yogaji Khobragade died on 15.05.2005. Apparently suppressing the death of Nanaji Yogaji Khobragade, several documents are executed by the applicant, and as consideration lakhs of rupees is received from gullible purchasers.

7. It is not as if the allegations have overtones of a civil dispute. Irrespective of the misuse of the power of attorney, the persons who executed the power of attorney in favour of the applicant ceased to be the owner w.e.f. 27.11.2007 on which date the confiscation /forfeiture order of the State Government is passed.

8. Notwithstanding the death of Mr Nanaji Yogaji Khobragade and the fact that the land survey 60 was Government land, the applicant merrily entered into one agreement after the other, and in the process, *prima-facie*, induced gullible persons to pay him huge amounts. It would be necessary to make a reference to few instances, out of the many, as an illustrative reference.

9. The applicant executed a document dated 21.4.2016 in favour of Mr Deepak Lanjewar claiming to be the power of attorney of Mr Nanaji Yogaji Khobragade and Mr Gopala Yogaji Khobragade. In the said document, the recital is that the applicant has agreed to sell a plot in favour of Mr Deepak

Lanjewar for total consideration of Rs 6 Lakhs and that as earnest, the applicant has received Rs. 3 Lakhs. The applicant has similarly induced Mr. Nikhil Siyam to part with Rs. 2 Lakhs on the basis of an agreement dated 26.3.2016. Similar *modus operandi* is adopted to dupe Mr. Rupchand Gajbhiye of Rs. 2,60,000/-. The material in the case diary indicates that the *modus operandi*, albeit crude, was planned with the cool head and implemented brazenly. The applicant purported to sell land, which is owned by the Government in view of the 27.11.2007 order. Further, the applicant could not have acted on the power of attorney executed by Mr Nanaji Khobragade after his death. The applicant, however, not only sold Government land to many persons by carving out plots from survey 60, he purported to act as a power of attorney of the deceased Nanaji Khobragade who died on 15.05.2005.

10. Mr. M.P. Khajanchi, learned counsel would submit that the application under Section 156 (3) of the Code is preferred by person whose motive are suspect, to say the least. Mr. M.P. Khajanchi, learned counsel would argue that the applicant who asked for an investigation has an axe to griend. In my considered view, irrespective of the intentions of the complainant, if the material discloses a cognizable offence, no fault can be found in the order passed by

the learned Magistrate and the registration of the offence.

11. Mr. M.P. Khajanchi, learned counsel would then submit that custodial interrogation is not necessary, since the original power of attorney and the lease document to which reference is made in paragraph-15 of the affidavit-in-response filed on behalf of the State is already seized. In my considered view, if the Investigating Officer is deprived of the opportunity of arresting and custodial interrogating the applicant, the investigation would be rendered directionless. Huge amount is collected from several persons, who presumably are not even aware that they are the victims of fraud.

12. The submission of the learned Additional Public Prosecutor Shri Doifode that it would be necessary to trace the proceeds of the crime and to further ascertain the role, if any, of any public servant or other person, in the land scam, cannot be brushed under the carpet. It is too well settled, that the quality of elicitation of the material when the accused is secure in the belief that he would not be facing custodial interrogation, and the quality of the material elicited in custodial interrogation is markedly different, (see ***State Rep. by the C.B.I. V/s Anil Sharma, (1997) 7 SCC 187***).

13. In my considered view, no discretion can be exercised since the societal interest will have to prevail over the individual interest of the applicant. Custodial interrogation is imperative to enable the investigating agency to unearth the various facets\_of the crime.

14. The criminal application is dismissed.

**JUDGE**