

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

CRIMINAL APPLICATION (ABA) NO. 580/2021

(Ravi S/o Raju Dikondwar Vs. State of Maharashtra)
 with

CRIMINAL APPLICATION (ABA) NO. 695/2021

(Sheikh Mahboob Sheikh Ismail Vs. State of Maharashtra)
 with

CRIMINAL APPLICATION (ABA) NO. 696/2021

(Ahmad Khan S/o Ismail Khan Vs. State of Maharashtra)

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

Court's or Judge's orders

ABA NO. 580/2021

Shri S. J. Kadu, Advocate for applicant.

Shri S. D. Sirpurkar, APP for non-applicant/State.

Shri G. D. Dani, Advocate for assist to prosecution

ABA No. 695/2021 & ABA No. 696/2021

Shri M. Shareef, Advocate for applicant.

Shri S. D. Sirpurkar, APP for non-applicant/State.

Shri G. D. Dani, Advocate for assist to prosecution

CORAM : VINAY JOSHI, J.

DATED : 02.12.2021.

Heard

2. All these bail applications are arising out of Crime No. 524/2021 registered with the Police Station Kalamana, Nagpur (City), District Nagpur for offence punishable under Sections 341, 406, 420, 506 read with Section 34 of the Indian Penal Code. The applicants have prayed pre-arrest bail by claiming innocence, false implication, inadequacy of evidence etc. Besides that, it is primly argued that there was no deceitful intention from the inception. The applicants have delivered possession of concern plot to the informant on the date of agreement itself. Not only that, the informant has constructed a

house, however as the concerned plot came under the reserved public recreation area, they have moved for regularization which is pending. In substance, it is submitted that a case of cheating, nowhere reveals from the report.

3. The State resisted bail by filing reply-affidavit. It is contended that the applicants have sold out public utility place to the informant. The Society run by the applicants had similarly sold some more plots to other customers. There was mismanagement in the Society. Though the applicants have accepted the amount, however sale-deeds were not executed and thus, the offence is of serious nature. Shri G. D. Dani learned Advocate has intervened on behalf of one Mangesh Thavre putting his grievance that sale-deed was not executed by the applicants. He did not lay a specific case as to where his plot lies. His principal contention appears to be non-execution of sale-deed.

4. The informant lady lodged report dated 19.07.2021 on the basis of which crime was registered. Applicant Sheikh Mahaboob Sheikh Ismail was a president whilst applicant Ahmad Khan S/o Ismail Khan was Secretary of concerned 'Samalochan Ekta Co-operative Housing Society'. Applicant Ravi S/o Raju Dikonwar was in the service of Society. The informant stated that on 06.07.2015, she has purchased a plot bearing No. 443A from the Society for valuable consideration. On the day of execution of agreement, she obtained possession of concern plot. Moreover, she has constructed house over there. The applicant stated that somewhere before

lodgment of report, the officers of Nagpur Improvement Trust (NIT) arrived at the place and asked to vacate by informing that the plots were in public utility place. On enquiry, the informant was stated that her plot would be regularized. Besides that, the informant has stated one another occurrence about alleged threat.

5. Learned counsel for the applicants would submit that the transaction was bonafide and genuine. It is stated that initially, a lay-out was prepared comprising several plots at Khasara No. 109 by forming 'Samalochan Ekta Co-operative Housing Society' in the year 2008. The lay-out plant was got sanctioned. Thereafter, as it was found that some of the plots were in public utility place, the new lay-out plan was prepared and placed for sanction to NIT. The applicant has produced old lay-out plan as well as new plan forwarded for obtaining sanction. Moreover, the applicant has produced a receipt showing payments to NIT for regularization of concern plots including plot sold to informant. On that basis, it is submitted that there was no intention to deceive as the applicants are taking genuine efforts for regularization of the plot sold to informant and others.

6. It reveals that in the year 2015, a plot was sold to the informant as well as possession was delivered. It requires to be noted that in the year 2015 itself, informant has constructed a house on said plot. Therefore, it cannot be said at least that there was non-existence of plot or multiple transactions were entered. The learned counsel for the applicants upon instruction made a statement that the applicants are in the process of regularization of plot

of which they would pursue the matter. Moreover, he would submit that the applicants undertake to bear all the expenses of regularization of plots.

7. Documents are produced to show that regularization proposal is in process. It is informed that in the meantime, regularization process was transferred to the Municipal Corporation, hence got delayed. It is a matter of trial to establish whether the applicants have carried deceitful intention.

8. Perusal of reply-affidavit indicates that Police want to collect various documents, audit report of the society. Moreover, it is stated that the applicants would tamper the prosecution evidence. The documents which are required for investigation are not specified. Necessity to seize audit report is not explained. There are no criminal antecedents against the applicants. It is specified by documents that regularization process is going on. Besides that, applicants have produced an affidavit sworn by the informant stating that at the instance of somebody else, she lodged report. The prosecution case is mainly based on documents. Be that as it may, having regard to the matter in hand, the investigation can be proceeded by directing the applicants to join the course of investigation.

9. Having regard to all above circumstances, the applicants' liberty can be protected by directing them to join the course of investigation. In view of that, following order:-

- (I) All applications stands allowed and disposed of.
- (II) Ad-interim order dated 06.09.2021 in Criminal Application (ABA) No. 580/2021, ad-interim orders dated 21.10.2021 in Criminal Application (ABA) No. 695/2021 and in Criminal Application (ABA) No. 696/2021 are hereby made absolute upon same terms and conditions.
- (III) The applicants shall continue to attend concern Police Station till filing of charge-sheet or for the period of 90 days whichever is earlier.

JUDGE

Gohane