

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

CRIMINAL APPLICATION (ABA) NO. 751/2021

(Meera w/o Devidas Motghare & ors. 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

Shri Uday Dable, Advocate for applicants.
Shri V. Thakare, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.

DATED : 15.12.2021.

Heard

2. This is an application under Section 438 of the Code of Criminal Procedure seeking pre-arrest protection in Crime No. 482/2021 registered with the Police Station Sitabuldi, Nagpur, District Nagpur. At the instance of report dated 22.10.2021 lodged by one Seema Lote, crime was registered for offence punishable under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code. After hearing both sides, this Court has expressed its non-inclination to grant protection to the applicant Nos. 1, 3 and 4. On such expression, learned counsel for the applicants seeks partial withdrawal to the extent of applicant Nos. 3 and 4, hence their case is not considered.

3. Rest of the applicants claimed bail on the ground of innocence and false implication. More particularly, it is contended that applicant No.1. is old age lady of 73 years. According to the applicants, the documents are in the custody of the Investigating Officer, therefore, there is no necessity of custodial interrogation. On the other hand,

the State resisted bail by filing reply affidavit. The contents of Police Paper are stated in brief. It is argued that the applicants have cojointly prepared false documents to grab the property. They have misrepresented MHADA Authority and by use of forged documents, got transferred both tenements in their name and therefore, matter requires thorough investigation.

4. The informant's husband namely Tarachand owned two tenements bearing Nos. 5/15 and 5/16 allotted by MHADA Authority. During life time, Tarachand was in the service of Center Railway, hence, he has allowed his brother Devidas to occupy the property as a gratuitous licensee. The original owner Tarachand died in the year 1998 whilst Devidas died in the year 2001. The applicants are widow and children of Devidas.

5. It is informant's case that in the year 2021, she has asked applicants to vacate both tenements which were owned by her husband Tarachand. Since the applicants have refused to vacate the premises, she inquired with the MHADA Authority on which, she learnt that on the strength of forged and fabricated documents, the property was got transferred in the name of applicants and therefore, the report.

6. Perusal of the case diary, *prima facie* indicates that after demise of original owner Tarachand as well as Devidas, applicants prepared several documents and on its strength got transferred the property in their name. The case paper contains a consent letter allegedly signed by the informant giving her no objection to transfer the premises in the name of Devidas. The informant in her

statement categorically denied that she has executed such document. Case paper contains several forms, affidavits and other applications made to MHADA Authority for transfer of the property. Pertinent to note that most of the documents were tendered after death of Devidas, however, shown to have been executed by Devidas for transfer. The case paper indicates that applicant No. 1 – Meera in her name applied to the MHADA Authority on 20.11.2004 to enter her name in place of Devidas. Apparently, though Devidas died in the year 2001, latter on, in his name several documents have been executed. There is *prima facie* material to show that after death of Tarachand and Devidas, documents were prepared in their name for sake of transfer. Though the applicant No. 1 – Meera is old age lady, however, the applications were filed in her name seeking transfer. Therefore, her custodial interrogation is necessary.

7. As regard to applicant No. 2 – Sonal and applicant No. 5 Kshama are concerned, they are daughter's of Devidas. Undeniably, they got married long back and staying at their matrimonial house. Though their signatures were obtained on some papers, however, they are not beneficiary in real sense. Considering their limited role, their liberty can be protected. The matter is quite serious that despite death of original owner and his brother, the false documents were prepared to transfer the property. Both sons of Devidas i.e. applicant Nos. 3 and 4 have withdrawn the application. Having regard to the nature of accusation, custodial interrogation of applicant No.1 is necessary as entire affairs were within her knowledge.

8. Having regard to all above facts, following order:-

- (I) Bail application is partly allowed.
- (II) Application as regards to applicant No. 1 – Meera w/o Devidas Motghare stands rejected.
- (III) Application in respect of applicant No. 2 - Sonal w/o Bipin Karan and applicant No. 5 Kshama w/o Randhir Awasarmol stands allowed.
- (IV) Ad-interim Order dated 02.11.2021 is made absolute in respect of applicant No. 2 - Sonal w/o Bipin Karan and applicant No. 5 Kshama w/o Randhir Awasarmol upon same terms and conditions.
- (V) Applicant No. 2 - Sonal w/o Bipin Karan and applicant No. 5 Kshama w/o Randhir Awasarmol shall attend concerned Police Station as and when called.
- (VI) Application to the extent of applicant No. 3 Shyamal S/o Devidas Motghare and applicant No. 4 – Snehal d/o Devidas Motghare stands disposed of as withdrawn.

JITENDRA
BHARAT
GOHANE

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JITENDRA
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JUDGE

Gohane