

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.192 OF 2022

SAYED PASHA S/O SAYED NAZAMODDIN

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. M.P. Kale, Advocate for the applicant

Mr. V.M. Kagne, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22nd FEBRUARY, 2022

ORDER :

1 Present applicant is apprehending his arrest in connection with Crime No.9/2022 dated 15.01.2022 registered with Sonpeth Police Station, Dist. Parbhani, for the offence punishable under Section 409, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. M.P. Kale for the applicant and learned APP Mr. V.M. Kagne for the respondent.

3 It has been vehemently submitted on behalf of the applicant that applicant is innocent. He is serving as Headmaster. If he is arrested in

connection with the crime then it will affect his service. He has moveable as well as immovable property and there is no question of he getting absconding. Some of the co-accused in the crime have been already released on anticipatory bail and some have been released on regular bail. Therefore, on the ground of parity also he deserves to be released on bail. The allegations against him are that he had borrowed salary loan of Rs.5,00,000/- on 29.03.2014 from one Sonpeth Urban Co-operative Bank Limited, Sonpeth and executed mortgage deed in respect of his property bearing No.343 situated at Shelgaon. Thereafter, again he had borrowed salary loan of Rs.10,00,000/- on the same property on 30.03.2018. Then it is alleged that he had sold the said property on 12.09.2017 to one Shaikh Pasha Suleman. Then again in 2020 the applicant purchased the same property from Shaikh Pasha Suleman. The loan was not repaid in entirety and, therefore, the financial institution obtained certificate under Section 101 of Maharashtra Co-operative Act and started the recovery proceedings. Public auction was published in the daily newspaper by the Bank on 03.11.2020. Applicant had then filed Regular Civil Suit No.97/2020 before Civil Judge Junior Division, Sonpeth for declaration of ownership. Thereafter the said suit was disposed of when it was suggested that the applicant should approach Co-operative Court. The informant was, in fact, not concerned with the transaction. He is only the resident of village Shelgaon. He had no authority to lodge the

report as there was no question of cheating to him. The applicant has never alienated the property bearing No.343 in favour of informant. The custodial interrogation of the applicant is not required.

4 Learned APP has strongly opposed the application on the ground that the matter is coming for the first time and he is yet to receive the papers. Contents of the First Information Report shows active involvement of the present applicant.

5 At the outset, it can be seen that criminal law can be set in motion by anybody. It is not necessary that the informant should be the person whose loss would have been caused. Here, the applicant, who is stated to be the Headmaster, had taken the salary loan twice; once for Rs.5,00,000/- and another for Rs.10,00,000/-. Then, it is stated that by forging documents he had even sold that property which was mortgaged by him and again purchased the same by a gap. The documents appear to show that certain certificates have been presented, of which the contents appeared to be either incorrect or false. Headmaster cannot afford to behave in such a manner when he is in fact a Teacher of the students, who should teach them honesty. No case is made out for the exercise of extraordinary powers in favour of the applicant.

6 Another fact to be noted is that the orders in respect of co-accused have been produced, but in all those orders the present applicant has been considered as the main accused. Therefore, the applicant cannot seek parity. The role attributed to co-accused are different. One more fact will have to be considered is that from the facts of the case, of which certain facts are admitted, no documentary evidence has been produced by the applicant to support the contention. It cannot be tolerated that the applicant should approach the Court first and then collect the documents. It should be rather that he should collect the documents first and then approach the Court. For non production of those documents also case is not made out to consider use of extraordinary powers under Section 438 of the Code of Criminal Procedure. Therefore, application stands rejected at the threshold.

(Smt. Vibha Kankanwadi, J.)

agd