

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

904 ANTICIPATORY BAIL APPLICATION NO.485 OF 2022

**SARITA W/O OMSINGH GAHILOT AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA**

Mr.S.M. Kshirsagar, Advocate for the applicants.

Mr.V.S. Badakh, APP for the respondent/State.

CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 26.04.2022

PC :-

01. The applicants are apprehending their arrest in connection with Crime No.314 of 2021, registered with Ardhapur Police Station, Dist. Nanded, for the offences punishable under sections 420, 422, 426, 447, 456, 464, 468, 470, 471, 472, 474 read with section 34 of the Indian Penal Code.

02. Learned APP strongly opposed the application. He submits that since the matter is coming for the first time, he is not armed with the papers, however, taking into consideration the contents of the FIR, there is an active role attributed to the applicants.

03. The learned Advocate for the applicants is pointing out that as per the sale-deed executed by applicant No.1 in favour of the informant she has sold only 990 sq.ft. area. Though the informant is saying that by agreement to sale dated 11.12.2007, something else was also agreed to be sold, yet for that purpose the informant has already knocked the doors of Civil Court. He has filed RCS No.26 of 2021. Further the informant has also filed Criminal Application No. 74 of 2020 for investigation under section 156(3) of the Cr.P.C. However, it appears that the learned Magistrate had not allowed that prayer and sent the matter for verification and by registering the case as RCC No.1095 of 2020, later-on after considering the documents on record and verification, process has been issued under section 420, 424, 418, 468 read with section 34 of the Indian Penal Code by order dated 05.01.2021. The matter is already subjudice. The transaction alleged to have been entered into in 2007 for which now after belated period, the informant is coming stating that he has been cheated. The applicants are ready to abide by the terms of the bail. The civil litigation has been tried to be given criminal angle and therefore the applicants deserve to be protected.

04. At the outset, the point of delay will not be only criteria either to

allow or reject the bail application, but then it is also required to be noted that in the complaint which was filed by the informant before the learned Magistrate, the process has been issued. It was stated by the competent Court that the prima facie case is made out against accused Nos.1 and 2. In-fact, in that case accused No.1 is Bank Manager, Buldhana Urban Credit Society, New Mondha, Nanded and present applicant is accused No.2. It is stated that they have prepared false documents and the property which was sold to the informant was mortgaged and then applicant No.1 has taken loan. It is also to be noted that the mortgage deed appears to have been created on 29.09.2007 but release deed has been entered into on 10.03.2022. Unless it is brought to the notice of the informant that such document has been entered into, he could not have lodged the report. The point of delay will have to be considered by the concerned Court at the appropriate stage. However, what is on record is the sale-deed, in which boundaries have been stated. Thereafter, there is also an agreement to sale in which it is stated that the property which was handed over to the informant was in-fact 1200 sq.ft. and if we consider the boundaries described in the sale-deed as well as agreement to sell, they are the same. The applicants are disputing this document and it is stated that the the document is forged. Till this date none of the applicants appear to

have knocked the doors of either police authorities or the Court to challenge the said document. The suit for specific performance has been filed. Merely because sufficient remedy has also been availed, that does not mean that there is no criminal angle to the facts. If we consider the complaint, then the informant-plaintiff had sought declaration that all four sale-deeds, out of Gat No.202 situated at village Dabhad, Tq. Ardhapur, Dist. Nanded, are not binding on him. Under such circumstance, this cannot be a case for this Court to exercise extraordinary discretionary relief under section 438 of the Cr.PC. The application stands rejected at the threshold.

[SMT. VIBHA KANKANWADI, J.]