

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.808 OF 2022

DNYANESHWAR SAHEBRAO KHARAT
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Ashwin V. Sakolkar
APP for Respondent/State : Mr. V. S. Choudhari
Advocate for Complainant : Mr. Abhaysinh K. Bhosale
(Applicant in APPLN/2218/2022)
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CORAM : S. G. MEHARE, J.

DATE : 27-07-2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent/State.
2. It is case of the complainant that the applicant sold the residential plot to her by the registered sale deed and handed over its possession to her. The complainant applied for electric meter with MSEDCL office. The MSEDCL also installed an electric meter in the said house. Then the complainant again inquired with the MSEDCL, she learnt that one Annasaheb Gulabrao Narwade was the owner of the said plot and he has applied for the installation of electric meter. Then she and her husband made inquiry. They learnt that the applicant has sold the said plot along with construction to one Annasaheb Gulabrao Narwade on 28.01.2022.

It has also been alleged that the applicant used old stamp paper and sold her property to Annasaheb Gulabrao Narwade. In such a way, the complainant has been cheated. On a report, the police registered the crime under Sections 420 and 406 of the Indian Penal Code. The learned counsel for the applicant submits that recently said Annaso Gulabrao Narwade made a complaint before the Police Commissioner against the husband of the present complainant. He has alleged in the said report that the present applicant never sold him the property.

3. The learned counsel for the applicant has vehemently argued that there are no ingredients of the offence punishable under Sections 406 and 420 of the Indian Penal Code. However, the husband of the applicant is in contact with one Police Inspector Shri. Patil posted at Jawahar Nagar Police Station. He is interested to purchasing the remaining part of the plot. Therefore, this false complaint is lodged against him. The plot in question is still in possession of the complainant. She has no allegations that her signature has been forged. Therefore, the custodial interrogation of the applicant is absolutely not required.

4. The learned APP has vehemently argued that Annasaheb swear in-affidavit before the Court. He has referred to the statement of the stamp vendor and argued that the present applicant has purchased the stamp from him and that stamp was

used for the transfer of the property to said Annaso Gulabrao Narwade. It has also been argued that on the application of the Annasaheb, electric meter installed in the house of complainant has been removed by the MSEDCL. The applicant has *modus operandi* to engage in such type of illegal business. The applicant has defrauded the complainant. In the same line, the learned counsel for the complainant assisting the learned APP added a wrong statement has been made by the counsel before the Court regarding suit pending about the suit property. They have prayed to dismiss the application.

5. Considering the allegations, it raises a serious doubt whether the offence punishable under Section 406 of the IPC is made out or not. To attract Section 420 of the IPC, (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

6. The complainant has a case that the applicant has sold the property to her by a registered sale deed. The possession of property was also handed over to her. She had no allegation that any fraud had been played by the applicant while selling plot to her; but, surprisingly she has come with a case that the applicant has sold her plot. In view of the fact, this Court is not satisfied that the prosecution has any material at this juncture to blame the applicant that he has cheated the complainant. The property which has been sold to the complainant is in her possession. She has no complaint about consideration paid by her to the applicant. Therefore, nothing can be recovered from the applicant to complete the investigation prevailing crime.

7. For the above reason, the application deserves to be allowed. Hence, the following order –

- i) The application is allowed.
- ii) The interim protection granted to the applicant by the order of this Court, dated 01.07.2022, is confirmed on the same terms and conditions of the bail.

(S. G. MEHARE)
JUDGE

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