

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1360 OF 2022

1. Anil Eknathrao Daigavane
2. Rita W/o Anil Daigavane Applicants

Versus

The State of Maharashtra Respondent

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Mr. V.D. Sapkal, Senior Advocate i/by Mr. Sandip R. Sapkal,
Advocate for the Applicants

Mr. D.R. Kale, Public Prosecutor for Respondents – State
assisted by Mr. S.G. Ladda, Advocate for informant

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st NOVEMBER, 2022

ORDER :

1. The applicants are husband and wife. They apprehend arrest in connection with Crime No. 0179 of 2022 registered with City Chowk Police Station, Aurangabad for the offences punishable under sections 120-B, 406, 420 read with 34 of the Indian Penal Code.

2. Applicant No.1 is an agriculturist. He is also doing the business of sale and purchase of the property. Applicant No.1 is doing business in the name of Bhakti Developers. This business is done jointly by the applicants.

3. Informant Ashok Shivnarayan Jaiswal lodged FIR against 11 accused persons, the applicants being accused No.1 and 2, alleging that from 7 hectare 38 R land out of Gat No.24, situated at *mouje* Naregaon, District Aurangabad, he took 3 hectare 65.09 R agricultural land on lease of 99 years by way of registered lease deed dated 07/09/2012 from Uruj Ahmed Siddiqui Gaus Moinoddin, Kazi Jafar Ahmed Gaus Moinoddin, Kazi Naim Ahmed Gaus Moinuddin and Javeed Ahmed Gaus Siddiqui. Accordingly, his name was entered in the 7/12 extract and he is in possession of the said land.

Since he was in need of money, in the month of February, 2022, he decided to sale the land and to invest the money in some other business. His brother Deelip introduced applicant No.1 to the informant and told that applicant No.1 intends to purchase the said land. Applicant No.1 agreed to purchase the said land for consideration of Rs.10 Crores. The applicant No.1 convinced the informant that he will give three cheques of Rs. 4 Crore, Rs.3 Crore and Rs.2.5 Crore and will transfer remaining amount of Rs.50 Lacs through RTGS.

4. The informant was told by applicant No.1 that since huge amount will be required for paying stamp duty, for the present, the transaction is shown to be of Rs.4 Crore.

Afterwards the correction deed of Rs.6 Crore would be executed. Believing applicant No.1, the informant executed registered sale deed in the name of applicant No.2 on 04/03/2022. The details of cheques and mode of balance payment is mentioned in the sale deed. It is stated in the sale deed that after the cheques are encashed, name of applicant No.2 will be entered in the revenue record and the informant would co-operate for the same. Thereafter, on deposit, the cheques given by the applicants were dishonoured. On inquiry by the informant, the applicants gave evasive replies.

5. It is further alleged that though the sale transaction was not complete and though the land sold by the informant was not transferred in the name of applicants in the revenue record, they have sold it to other accused persons named in the FIR, on the same day. Hence, the informant alleged that the applicants have committed criminal breach of trust and he is deceived of Rs.10 Crores.

6. Heard the learned Senior Advocate for the applicants, learned Public Prosecutor for the respondent – State and Mr. S.G. Ladda, learned Advocate for the informant. Perused the papers of investigation.

7. Learned Senior Advocate for the applicants submits that a clear case of civil dispute is given colour of criminal offence, so as to pressurize the applicants. He submits that pursuant to the registration of crime, the investigating officer by issuing notice under section 41(A)(1) of the Code of Criminal Procedure called upon the applicants to attend the police station for interrogation. Accordingly, the applicants attended the police station and have co-operated in the investigation. By relying on the decision in ***Satender Kumar Antil V. Central Bureau of Investigation, AIR Online SC 956***, he submits that in view of co-operation extended by the applicants in the investigation, their pre-trial detention is not necessary in the facts of the present case.

8. Learned Public Prosecutor and the learned advocate for the informant strenuously opposed the application contending that, from the FIR, it can be gathered that since beginning the applicants had intention to cheat the informant. The applicants on the same day on which the informant executed sale deed in their favour, immediately, without the sale transaction having been completed, entered into sale transaction of the said land with other accused persons. This is sufficient to show that since beginning the applicants wanted

to cheat the informant. It is submitted that presence of the applicants is necessary for effective investigation. Hence, the application may be rejected.

9. From the allegations made in the FIR and the investigation papers, *prima facie*, the dispute appears to be of civil nature. The Public Prosecutor, on instructions, fairly states that pursuant to the notices dated 15/06/2022 and 17/06/2022 issued by the investigating officer under section 41(A)(1) of the Criminal Procedure Code, both the applicants attended the police station and have co-operated in the investigation.

10. On the last date of hearing, on instructions, the learned Public Prosecutor submitted that almost all the documents are attached during the course of investigation, however, the cheque book from which the cheques referred to in the FIR are issued, is required to be attached. On such statement being made, the applicants had undertaken to produce the said cheque book before the investigating officer. Today, the learned Public Prosecutor submits that the applicants have produced the said cheque book and the same is attached. The offence pertains to documents, which are already seized by the investigating officer.

11. Learned senior advocate for the applicants is right in relying on ratio in ***Satender Kumar Antil V. Central Bureau of Investigation*** (supra), wherein it is held that, “*where the accused complies and continues to comply with the notice under Section 41(A)(1) of the Criminal Procedure Code, he shall not be arrested in respect of the offence referred to in the notice, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested*”. It is further held that, “*even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or*

to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured”.

12. The above ratio squarely supports the case of the applicants.

13. In view of the attending circumstances and the facts of the case, pre-trial custodial detention of the applicants is not warranted as the applicants have already co-operated in the investigation and as the documents are already attached by the investigating officer.

14. In that view of the matter, the application is allowed by confirming interim protection.

15. Till filing of charge-sheet, applicants shall attend the concerned police station as and when called by investigating officer and they shall not tamper the prosecution evidence.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane