

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.959 OF 2021
WITH
INTERIM APPLICATION NO.1309 OF 2021**

Swati Nitin Narke ..Applicant
Versus
State of Maharashtra ..Respondent

**AND
ANTICIPATORY BAIL APPLICATION NO.967 OF 2021
WITH
INTERIM APPLICATION NO.1310 OF 2021**

Dattatray Kisan Raskar ..Applicant
Versus
State of Maharashtra ..Respondent

Mr. Satyavrat Joshi i/by Sunil S. Kamble, for the Applicant in both Applications.
Ms. Sharmila S. Kaushik, APP for the Respondent/State.
Mr. Bajirao Naik, Shivajinagar Police Station, Pune City - present.

CORAM : NITIN W. SAMBRE, J.

DATE : 14th SEPTEMBER, 2022

P.C.

1. Applicants are seeking pre-arrest bail in Crime No.10 of 2021 registered with Shivajinagar Police Station, Pune for the offence punishable under Sections 406, 420, 419, 504, 506 of IPC.
2. The prosecution case against the applicants is as under :-

The complainant sold 175 buffaloes as against which consideration was not paid by the applicants of Rs.1,42,62,500/-. That being so, it is claimed that applicant - Swati along with her husband alleged to have executed Power of Attorney in relation to the immovable property towards security of said amount. Upon verification, it was found that the property in relation to which Power of Attorney executed was not owned by the accused persons and as such they had not lawful authority to deal with it.

3. Applicant - Dattatraya was also party to the aforesaid deal and as such promised the complainant to pay the amount and has issued cheques which were not honoured. The promissory note was executed by Dattatraya which was also not honoured. That being so, the offence in question.

4. Mr. Satyavrat Joshi, counsel appearing for the applicants would urge that the issue of legality of FIR based on the order passed by the Magistrate in exercise of powers under Section 156(3) of the CrPC is subjudice before the Division Bench i.e. Criminal Writ Petition No.4576 of 2021 and Criminal Writ Petition No.4600 of 2021 in which interim order not to file charge-sheet is in operation. He would urge that the applicant-Swati has already initiated divorce proceedings against her husband Nitin who is accused in the matter as she has fed up with such notorious activity of the said co-accused i.e. her husband. It is further claimed that since the order which has resulted in the registration of offence passed by the Magistrate is illegal, this Court has granted ad-interim protection on 23rd

April, 2021. As such, he would urge that the ad-interim protection order needs to be confirmed.

5. Learned APP based on the investigation carried out till this date would urge that in calculated manner all the three accused have committed offence in question. According to him, the issue as to whether the order of the Magistrate is just and legal can be looked into while considering the writ petition. However, this Court is required to be appreciative about the *prima-facie* case against the applicants. Based on the investigation carried out till this date, it is claimed that there is enough material available against the applicants in the crime in question.

6. The investigation, so also contents in the FIR depicts that the applicants took delivery of buffaloes from the complainant as against which assured payment of consideration of Rs.1,42,65,500/-.

7. Till this date consideration is not paid though it was assured by the accused persons. The applicant-Swati along with co-accused her husband executed Power of Attorney in favour of the complainant thereby making him understand that his amount is secured and the same will be paid in due time. The investigation carried out depicts that the applicant-Swati, so also husband Nitin are not owner of the property in relation to which the Power of Attorney was executed. That being so, necessary ingredients of Section 406, 420 of IPC at its face value can be inferred against the applicants.

8. Apart from above, the confirmation of the liability by the accused/applicant Mr. Dattatraya Tanawade, the post dated cheques issued by said accused *prima-facie* demonstrates that said liability is accepted by the accused persons.

9. Divorce proceedings initiated by applicant appeared to be after the commission of offence. There are about ten offences registered against the applicants within the jurisdiction of Pune revenue district which are mainly under Section 420 of IPC.

10. In this background, once necessary ingredients can be inferred *qua* involvement of the applicants in the offence in question, in my opinion, protection from arrest cannot be continued or granted.

11. Both these applications, so also interim applications stand rejected.

[NITIN W. SAMBRE, J.]