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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1133 OF 2022**

Pratap Nanasaheb Sarode Applicant.
V/s
The State of MaharashtraRespondent.

**ALONGWITH
INTERIM APPLICATION NO.2000 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 1133 OF 2022**

Mr. Ramesh Sudham Sarode Intervener/
complainant
In the matter between
Mr. Pratap Nanasaheb SarodeApplicant.
V/s
State of Maharashtra
(Through Shirur Police Station, Pune) Respondent.

Mr. Avinash B. Avhad for the Applicant.
Ms. Sharmila S. Kaushik, APP for the Respondent/State.
Mr. Sagar B. Deokar for the Intervener.

CORAM: NITIN W. SAMBRE, J.

DATE: SEPTEMBER 26, 2022

P.C.:-

- 1] Heard.
- 2] For the reasons stated in the Interim Application, same is allowed.

3] In Crime No. 249 of 2022 registered with non-applicant Police Station which is punishable under Sections 467, 468, 471, 420 of the Indian Penal Code viz forgery, cheating etc. Applicant is seeking pre-arrest bail.

4] The case of the prosecution is, on 19/05/2017 Sale Deed was executed by Sudam Sarode for 2 Hectares of land of which 51 R went to Nanasaheb Sarode, 51 R to Sarjerao Sarode, whereas has gifted 80 R land in favour of Ramesh Sarode in 2019. Complainant claims that in the said document of 2017, incorrect name of father of the Applicant was recorded. As such, pretending that Applicant intends to get correction deed executed, Applicant approached the complainant with a request for accompanying him to the office of the Registrar for execution and registration of Correction Deed to the Sale Deed dated 19/5/2017. Complainant further claims that instead of getting Correction Deed executed, Applicant got executed Sale Deed dated 27/01/2022, thereby purchasing the land of the complainant to the extent of 80 R and 51 R for consideration of Rs 8,05,000/- and Rs 5,15,000/- i.e. total Rs 13,20,000/-.

5] As such, it is claimed that by pretending that Correction Deed is to be executed, the Applicant by practicing fraud committed forgery by forging the document and got the Sale Deed executed. As such, the offence in question.

6] Heard Mr. Avhad, learned Counsel for the Applicant and Ms. Kaushik, learned APP appearing on behalf of the State and Mr. Sagar Deokar appearing on behalf of the Intervener/complainant.

7] Contention of the Counsel for the Applicant is, document in question is executed after having received valid consideration as reflected therein. He would urge that an amounts of Rs 5 lakhs and Rs 2,65,000/- were duly received by the father of the complainant and Amit Sarode, the transferers. He would further urge that amount in cash of Rs 3,05,000/- and Rs 2,50,000/- were respectively received before Registrar in cash at the time of execution and registration of Sale Deed. He would also invite my attention to the photographs of the transferers, market value of the land of Rs 13,17,860/- as against the total consideration of Rs 13,20,000/- and nature of document which is executed which speaks of the sale of undivided share. According to him, even witnesses have not disputed about execution of document by the complainant and transferers. As such, he would urge that since there is presumption in favour of registered document, the necessary ingredients of the offence alleged are not made out. He would further urge that already respective Mutation Entries are carried out in favour of the Applicant and the complainant and transferer are pursuing their remedy before the revenue authorities.

8] While countering aforesaid submissions, learned APP assisted by the learned Counsel for the complainant would urge that this Court is required to be sensitive to the fact that document dated 19/5/2017

contains name as Sarjerao Gajaba Sarode which is wrongly mentioned and therefore requires appropriate correction which is formed to be the basis for convincing the transferers to attend the proceedings before the office of Sub-Registrar. Learned APP submits that considering the market value of the property, entire transaction being in cash, execution of document in suspicious circumstances can be inferred. My attention is also invited to the alleged conversation between Amit one of the transfer with that of Applicant so as to demonstrate that Applicant has practiced fraud on the transferers.

9] I have appreciated said submissions.

10] The bone of contention in the present Application is in relation to execution of registered Sale Deed dated 27/01/2022. Said document not only contains consideration offered and paid to the transferers but also contains documents of identity of transferers, consideration received by them and the said document being executed in the presence of witnesses.

11] Document appears to have been executed and tendered for registration at the same point of time. In such an eventuality, presumption appears to be in favour of the present Applicant. The provisions of Section 34 of the Registration Act, 1908 are significant herein to refer to. Said provisions read thus:

“34. Enquiry before registration by registering officer.—(l) Subject to

the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26: Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon-

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.”

Sub-section (3) of Section 34 as referred to above, categorically speaks of duty of registering officer to inquire whether document was executed by the persons by whom it purports to have been executed, satisfy himself as to the identity of the persons executing. As such,

fact remains that Applicant has appeared before the registering authority for execution of the document which fact is not in dispute. Once the document is executed and registered pursuant to the provisions of Registration Act, document gets status of admissibility in evidence under the provisions of the Indian Evidence Act. In such an eventuality, only option remains with the complainant is that of questioning the said document before the competent civil court. Fact remains that document was executed on 27/01/2022, subsequent to which Mutation Entries have been carried out in favour of the Applicant. It is only in March, 2022 complainant has lodged a protest before the Tahasildar about Mutation Entries and subsequent to aforesaid protest before the Tahasildar, complainant has lodged complaint which has resulted into registration of offence. As such, aforesaid conduct of the complainant and delay in lodging FIR is not explained. The signatures on the deed are admitted by the Complainant.

12] Apart from above, it appears that execution of sale deed is duly acknowledged as could be inferred from the telephonic/mobile conversation between Amit Sarode one of the transferer and the Applicant, transcript of which is produced on record.

13] In these circumstances case for confirmation of ad-interim protection is made out.

14] Applicant in the event of his arrest in C.R. No. 249 of 2022

registered with Shirur Police Station for the offence punishable under Sections 467, 468, 471, 420 of the Indian Penal Code, be released on bail on executing PR. Bond of Rs 15000/- with one or more sureties in the like amount. Applicant shall neither influence the witnesses in any manner nor tamper with the evidence. Applicant shall attend the Investigating Officer of the concerned Police Station from 27th September, 2022 to 29th September, 2022 between 10.00 A.M. and 12.00 Noon and thereafter as and when directed by the Investigating Officer.

15] Application is disposed of.

(NITIN W. SAMBRE, J.)