

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1598 OF 2022

Mr. Rajeevkumar Singh @ Deepak Singh. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

**WITH
INTERIM APPLICATION NO. 1974 OF 2022
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1598 OF 2022**

Aleem Himmat Baig. ... Applicant.

V/s.

The State of Maharashtra & anr. ... Respondent.

Mr. Sunil Kumar a/w. Mr. Mangesh Ghodke, Jitendra Yadav, Rohit Upadhyay i/b. M/s. Kumar & Associates, advocate for applicant.

Mr. Ashutosh Gole, Advocate for intervenor.

Smt. A.A. Takalkar, APP for State.

PI Shri Jitendra Patil, Kashimira Police Station.

CORAM : BHARATI DANGRE, J.

DATE : AUGUST 4, 2022.

P.C.

1 Heard the learned Counsel for the applicant and the
learned APP. In terms of the order passed by me yesterday, the arguing

This Order is modified as per Speaking to the minutes of the order dated 24/8/2022.
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counsel is present but he states that he was unaware when the applicant left the court and today he is not present. Learned Counsel makes a specific submission that he is not present in the court, as the other two accused whose application stand rejected have already approached the Supreme Court and even the applicant is desirous of the taking order of this Court to the Supreme Court. There cannot be any quarrel about proposition that every applicant/litigant, if he has remedy to approach higher court is entitled to avail the same. However, in the present case, before the order could be passed and when the applicant is specifically ordered to remain present in the court, it is noticed that he has failed to abide by the said direction and today when the matter is called out, learned Counsel states that the applicant is not present. It is ultimately the prerogative of a Counsel to advise his client, to abide by the directions issued by a court and the counsel has chosen to advise his client not to act in furtherance of the direction of this court.

I do not wish to take the matter further but cannot resist myself from observing that the duty of a lawyer to this court must stand always over the individual interest of his client.

I wish to say nothing more.

2 By the present application, the applicant is apprehending arrest in C.R. No. 06 of 2022 which was registered with Kashimira Police Station invoking Sections 420, 465, 467, 468, 471, 472 read with 34 of the Indian Penal Code.

3 The complaint is registered at the instance of Alim Himmat Beg who has alleged that he is the owner of a land admeasuring 64 gunthas in Survey No.170 Hissa No. 10 and land in Survey No. 169 Hissa No. 1 which he purchased from one Shivaji Nikhade by registered document dated 24/12/2019 and thereafter his name came to be muted in the land record on 6/1/2020 vide mutation entry No. 3242.

4 The complainant alleged that he has acquainted with one Anil Singh as well as Rajeev Subhash Singh(the present applicant), who is resident of Jonpur, U.P. and he agreed to sell 10 gunthas of land for the purpose of development of the same. Accordingly, on 10/6/2019 a notorised agreement to sale was executed for which he received sum of Rs. 2,80,000/- as a part consideration on 13/5/2019 and on 29/5/2019 he received an amount of Rs. 15,00,000/- by RTGS from Anil Singh. The remaining consideration of Rs. 32,20,000/- was not paid within the time stipulated and therefore by executing document on 19/2/2020 in

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presence of Notary, he cancelled the said agreement. Thereafter, he was introduced to one Rajeev Kumar Singh and since he was in debt, he demanded money from the complainant. In pursuance of said, he gave cheque of Rs. 9 Lakhs dated 3/6/2019 and a cheque of Rs. 3 Lakhs i.e. total Rs. 12 Lakhs dated 11/6/2019 by way of loan. In the year 2019, the applicant Rajeevkumar Singh expressed his desire to purchase 25 gunthas of land for the purpose of development of the property and for further selling it, which would have yielded income to the complainant and therefore, he agreed for sale of 25 gunthas of land. The deal was fixed for Rs. One and Half Crore. Accordingly on 22/11/2019 a agreement was executed for sale as well as Power of Attorney was executed, which permitted the purchaser to develop the land with his consent and even rights to sale were also conferred. Agreement to sale with Anil Singh was cancelled and he again expressed his desire to purchase 25 gunthas of land alongwith corresponding rights. The transaction was fixed at Rs. 1,54,50,000/-. Since Anil Singh has already paid him Rs. 17,80,000/-, agreement of understanding was also executed. Accordingly he received a cheque of Rs. 10 Lakhs and the complainant narrate that he received total amount of Rs. 40,50,000/- from Anil Singh but thereafter, no amount was received by him.

5 To his surprise, at a subsequent point of time, the complainant came to know from Bhausahab Kharpade that he has purchase plot from Rajeev Kumar Singh. He has entered into an agreement for sale and on the basis of the power of attorney, he had already entered into transactions with third parties and the documents were prepared. Thus the property was sold to different persons, though he had not acquired title to the said property, since full consideration was not passed on to the complainant. Several such agreements were executed before Notary and he visited the notary Yadvesh Chanda Dughe to realise that the concerned Advocate Yadvesh Dughe had lodged a complaint against one advocate Virendra Mishra. Vide C.R. No. 30/2021 came to be registered and Virendra Mishra came to be arrested in the said C.R.

6 Heard the learned Counsel for the applicant and the learned Counsel for the intervenor. Learned Counsel for the applicant has relied upon the compilation of documents which include memorandum of understanding dated 6/6/2019, agreement dated 8/5/2019, agreement dated 15/10/2019, deed of conveyance dated 24/12/2019. Learned Counsel would submit that before the agreement came to be registered, a

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document in the form of memorandum of understanding was executed where he is permitted to part with the land and relying upon this he had entered into agreement with third parties.

7 When the memorandum of understanding is carefully perused, it is neither notarised nor registered but it is only scribed on 500 rupees non-judicial stamp paper. When the recitals are specifically perused, it can be seen that the agreement contain mention of Rs. 5,00,00,000/- (Rs.5 crores) as consideration out of which the sum of Rs. 2,80,000/- as a token, is mentioned as already received by the vendors through bank transaction and the receipt was also appended. It was agreed that the balance of Rs. 4,97,20,000/- would be paid within a period of 16 months.

It is pertinent to note that the said document alongwith the receipt has various blank columns and even there are no signatures of the witnesses. Further the column referred to as date, which appended to the said document is also blank. By the said document, it is tried to be conveyed that the transaction was entered between the complainant and one Kamlesh Singh and the applicant Rajeev Kumar Singh as purchaser. Description of the land is also mentioned in the MOU.

Another document on which reliance is placed on agreement dated 8/5/2019 and 15/10/2019 which are also notarised before advocate A. Kalam Khan. As far as the amount of Rs. 2,80,000/- which has been alleged to have received as part consideration, learned Counsel Mr. Gole for the intervenor submit that the said amount is in the nature of consideration towards another transaction and is not a part of the same transaction which is shown to be reflected in the memorandum of understanding.

8 The learned Counsel also tried to make a feeble attempt to demonstrate that the complainant himself was not the owner of the land when he entered into deal with the accused persons and deed of conveyance dated 24/12/2019 is placed on record to demonstrate so. Perusal of the said deed of conveyance between the complainant and his vendor and the other parties mentioned as constituted power of attorney Mr. Mohammad Lukman M. Shaikh, Director of M/s. Aatharv 4U Infra & Agro Ltd. would reveal, from its recital, that the confirming party Mr. Shivaji Shankar Nikade, director of M/s Aatharv 4U Infra & Agro Ltd. has sold land in survey no. 170 Hissa No. 10 admeasuring 4300 sq. meters and land in survey no. 169 H. 1 admeasuring 2100 sq.meters, total 6400

sq.meters i.e. 64 gunthas situated in village Ghodbunder, Taluka and district Thane to Mr. Aleem Himmat Baig i.e. complainant and this indenture witnesseth that the vendors and confirming party have agreed to sale the said property described in the schedule for a consideration of Rs. 2,55,00,000/- (Rs. Two Crore Fifty Five Lakhs only) and all the rights to sell, assign, release, convey and assure were passed on to the purchaser. One of the covenant in the said document is specifically recorded as under:

“The Vendor and Confirming Party hereby confirm and place on record that they have already received the entire consideration of Rs. 2,55,00,000/- (Rs. Two Crore Fifty Five Lakhs) from the Purchaser in respect of the said property and as such, there is nothing due and payable to them either by the confirming party or by the Purchaser in respect of the property, more particularly described in the schedule hereunder written.”

Perusal of this document show the complainant as owner of the property and his name has been shown as vendor, the applicant in any case is not entitled to raise his defence that the title do not vest in the complainant when he entered into transaction, with the applicant.

9 It is pertinent to note that the applicant also filed Regular Civil Suit No. 10 of 2021 before the Court of Civil Judge(Junior Division), Thane seeking simplicitor injunction and no other relief is sought for. Copy of the plaint and written statement is also placed on record where the complainant specifically took a stand that the plaintiff had avoided to execute a deed of cancellation of the said writing with this defendant and for the said reason, the defendant has already lodged complaint on 21/12/2020 in Kashimira police station against the applicant and his brother Shri Sanjivkumar Singh.

 It is to be noted that the applicant did not claim any title in the said suit property but sought simplicitor injunction. I need not go further into the proceedings before the said court. But suffice it to note that it is not a suit for perpetual injunction or for claim of title but is for simplicitor injunction.

10 Co-accused Anil Kamlesh Singh and Kamlesh Triveni Singh had approached this court by filing Anticipatory Bail Application No. 648 of 2022 and by order dated 16th March, 2022, the observations made qua the said applicants, equally apply to the present applicant. The pertinent

observations in paragraph-10 read as under :

“10. The records reveal that the Applicants and the other co-accused had no title over the land despite which they had agreed to sell small portions of the land to several purchasers by representing that they were the owners of the said land and have accepted a huge amount of consideration from the said purchasers. The records also prima facie indicate that the signature and seal of the notary on aforesaid agreements is forged and fabricated. In this regard the notary had already filed FIR No. 302 of 2021 against the co-accused Virendra Mishra for preparing and using a bogus notary stamp and seal and for forging signature of the notary.”

11 During the course of argument, learned APP has placed on record the statement of the notary Yadavesh Chandra Dubey recorded on 30/1/2022, where he was confronted with various documents which were executed by the applicant with distinct purchasers, in respect of different parcels of land, on the basis of the title, which he claimed from the complainant and when the notary is confronted with eight such agreements where the applicant is the signatory, he specifically stated that

no such agreements were notarized by him and the person who are signatory to the said document, and who signed as purchaser/witnesses were never presented themselves before him. The notary has specifically state that his seal has been used on certain documents and alleged that fraudulent transaction has been entered into. He has already lodged a complaint in Kashimira Police Station being C.R. No. 302 of 2021 by invoking section 420, 465, 467, 471, 472, 468 off the Indian Penal Code.

12 On the earlier dates of hearing in order to ascertain the actual nature of transaction, the applicant was directed to report the investigating officer.

Learned Counsel for the applicant placed reliance on memorandum of understanding dated 6/6/2019 claiming and this is claimed to be the basis, before entering into the conveyance deed dated 24/12/2019, that the complainant is claiming his right to deal with the land of the complainant. The applicant was directed to produce the original of the said document but he has failed to produce the same and has given a statement that he is not in a possession of the said document. Apart from this, he has pleaded ignorance about the agreement which was notarized and he specifically stated that he has only helped in

preparing the said document, and one Jitesh D. who had prepared document on computer but he was unaware what these documents contained.

The above facts surfacing on record during investigation makes a case for custodial interrogation of the applicant.

The Anticipatory Bail Application therefore is rejected. Needless to state that Investigating Officer is at liberty to effect arrest and take the applicant into custody for the purpose of interrogation.

13 In the wake of disposal of the anticipatory bail application, interim application is also disposed of.

SMT. BHARATI DANGRE, J