

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 594/2021

(Mirza Nadim Being S/o Shamim Baig Vs. The State of Maharashtra)

AND

CRIMINAL APPLICATION (ABA) NO. 595/2021

(Mohammed Tohid S/o Haji Hanif Jada Vs. The State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M. P. Kariya, Advocate for applicants.
Shri S. D. Sirpurkar, APP for non-applicant/State.
Shri A. V. Bhide, Advocate for assisting to prosecution.

CORAM : VINAY JOSHI, J.

DATED : 06.01.2022.

Heard.

2. Crime No. 252/2021 was registered with the Police Station Bhiwapur, District Nagpur for offence punishable under Sections 420, 426, 447 read with Section 34 of the Indian Penal Code at the instance of report lodged by one Shiwrama Satyanarayana. Both applicants are apprehending arrest in said crime, hence they have approached for grant of pre-arrest protection by claiming innocence and false implication.

3. It is informant's case that he is owner of piece of land admeasuring 2.16 hectare situated at Bhiwapur. The applicant Mohammed Tohid (Criminal Application [ABA] No. 595/2021) has agreed to purchase said land in consideration of Rs. 2,94,25,000/-, for which agreement to sell dated 31.01.2019 was executed. Time to time, Mohammed Tohid has paid consideration and as such, paid partconsideration of Rs. 1,00,00,000/- towards sale transaction. It was agreed that the entire sale price would

be paid upto 01.10.2019, on which the informant would execute sale-deed. However, applicant Mohammed Tohid showed his inability to pay balance consideration of Rs. 1,94,25,000/-. Therefore, applicant Mohammed Tohid has requested informant to obtain N.A. permission and prepare lay-out plan on the subject land. He requested to allot 1/3rd plots of the land towards the payment which was already made. Accordingly, the informant has appointed applicant Mirza Nadim (Criminal Application [ABA] No. 594/2021) as his power of attorney holder to process for obtaining N.A. permission. Over the period of time, N. A. permission was obtained. The informant stated that though possession was not delivered nor sale-deed was executed, still applicant Mohammed Tohid, illegally sold 72 plots of the subject land. Not only that, the applicant Mohammed Tohid has prepared a false document dated 27.07.2019 showing that possession has been delivered to him. On further inquiry, it was learnt that the applicant has also prepared a false lay-out plan posing himself to be the owner of land and accepted huge consideration from various purchasers by executing agreements to them. Since the applicants have conjointly prepared various false documents, represented themselves to be the owner of land and without authorization, sold the plots to the third party therefore, the report.

4. Learned counsel for the applicants would submit that it was purely a civil transaction. Towards part consideration, huge amount has been paid to the informant. By mutual understanding, applicant Mohammed Tohid prepared lay-out in the name of informant and sold plots to the prospective buyers. It is

denied that the applicants have prepared forged document dated 27.07.2019 about delivery of possession. Applicants have alleged that the Investigating Officer has tampered the lay-out plan at the behest of informant. Already applicant Mohammed Tohid has filed civil suit in the month of March 2020 and thus, all the issues raised in the report are the subject matter of civil suit. According to the applicants, all necessary documents are handed over to the Investigating Agency, hence there is no need of custodial interrogation.

5. The State as well as informant has resisted bail by filing reply affidavit. The State has reiterated the contents of First Information Report (FIR) in brief. It is stated that during course of investigation, various documents are seized. It was revealed that the applicants have prepared forged and fabricated documents and lay-out plan. The Police have recorded statements of various plot purchasers who stated that applicant Mohammed Tohid posing himself to be the exclusive owner, has executed agreements and accepted huge consideration. Applicant Mirza Nadim has actively assisted applicant Mohammed Tohid in preparing false Map and in creation of false documents. A huge consideration of Rs. 1,64,68,000/- has been received by applicant Mohammed Tohid from various purchasers. The custodial interrogation is necessary to find out the details about preparation of false Map, lay-out plan and other fabricated documents.

6. It is not in dispute that the informant was owner of huge piece of land. The informant entered into agreement to sell with applicant Mohammed Tohid. He

has accepted part consideration of Rs. 1,00,00,000/-, however the transaction was not materialized. It is the main grievance that the informant has neither delivered possession of subject land to applicant Mohammed Tohid nor authorized to him to sell plots of the subject land. It is alleged that the applicants have prepared a forged document dated 27.07.2019 showing that possession has been delivered. It is not denied that a lay-out plan has been prepared and applicants have sold 72 plots to the different purchasers by accepting consideration. No doubt the applicants' suit for specific performance is pending, however the title of land remains with the informant. The applicants are unable to satisfy as to how, they were authorized to sell the plots to different purchasers on the subject land which is owned by the informant. It is submitted that by virtue of oral agreement, applicants have sold the plots, however there is no bearing in the said contention at all.

7. It is the prosecution case that the applicants have prepared forged document dated 27.07.2019 to show that possession has been delivered. Perused the case diary and various statements. *Prima facie*, it reveals that there are two documents dated 27.07.2019 allegedly executed by the informant. It is the matter of investigation to find out the genuineness of the documents. It is the grievance that while preparing lay-out plan, applicant Mohammed Tohid has shown himself to be the owner of the property. Various statements to that effect have been recorded to state that different purchasers have been represented that applicant Mohammed Tohid is the owner of the property. It is the applicants' contention that the Investigating officer

has tampered the lay-out plan by inserting applicant Mohammed Tohid as a owner. The said submission *prima facie*, does not have bearing since it is a dispute between two parties. Various documents like alleged agreement and tampered lay-out plan are to be examined. Certain documents have to be seized. The statements of plot purchaser discloses that they have been misrepresented by applicant Mohammed Tohid showing himself to be the owner of the property. Though the suit for specific performance has been filed, however even prior to the sanction of lay-out plan, applicant Mohammed Tohid with the assistance of applicant Mirza Nadim has gone on selling the plots for consideration. The matter requires thorough investigation.

8. By placing reliance on some decisions, learned counsel for the applicants submitted that the offence punishable under Sections 420 and 426 of the Indian Penal Code are not made out, however it is a factual aspect. Considering existing material at this *prima facie* stage, it cannot be said that the offences are not made out. *Prima facie*, it reveals that despite ownership and authorization, the applicants have represented themselves as a owner and sold plots to the third party who are also aggrieved persons. The matter requires investigation, hence it is not a fit case to grant pre-arrest protection.

9. In view of above, both applications stand rejected and disposed of.

JUDGE