

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.410 OF 2023

1. Shaikh Usman s/o Gafur Attar
2. Amodi Shaikh Abood s/o Abdul Raheman
3. Shaikh Akbar Jalaluddin s/o Sharfoddin

VERSUS

The State of Maharashtra,
Through Investigation officer,
Police Station, Shevgaon, Dist. Ahmednagar.

Mr. Shaikh Ashraf M. Patil, Advocate h/f Mr. Shaikh Faruk Patel, Advocate
for the applicants
Mr. G. O. Wattamwar, APP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 20th JULY, 2023

P.C. :-

1. Applicants apprehend arrest in connection with Crime No. 78/2012 registered with Shevgaon Police Station, Dist. Ahmednagar for the offences punishable under Sections 416, 417, 419, 420, 465, 467, 468, 342, 343, 506(2) of IPC.

2. An application was filed by Dattatraya Darandale with concern Magistrate under Section 156(3) of Cr.P.C. An order came to be passed in the said application and pursuance to the said order the first information report was registered. It is a contention of the complainant that he is owner of the land situated at Sonai. It is alleged that neither

he himself nor his family members had authorized any person to enter into the transaction for the said land. It is stated that on receipt of the summons in Special Civil Suit No. 53/2012 came to the knowledge of the complainant that bogus document is prepared in respect of the property belonging to him. It is alleged that the son of the complainant was threatened not to lodge complaint about the same to the police.

3. Learned counsel for the applicants states that in respect of the said transaction not only agreement to sale is executed and earnest money is received by the complainant and his family members but the public notice about the said transaction was given in prominent newspapers in district Ahmednagar. It is also submitted that notice was also issued on 3rd March, 2012 to the complainant for specific performance of the contract and thereafter civil suit being Spl. C.S. No. 53/2012 came to be filed wherein Exhibit 5 was allowed. He submitted that the complainant is trying to give criminal colour to a civil transaction. It is submitted that the entire transaction is in respect of documents and hence custodial interrogation of the applicants is not necessary.

4. Learned APP opposed the application by contending that there are specific allegations against present applicants of fabricating the documents pertaining to the property belonging to the complainant and

in order to ascertain the involvement of the applicants in the crime, custodial interrogation of the applicants is necessary.

5. The alleged offence is of year 2012. *Prima facie* perusal of the record indicates that public notice was given with regard to the intention regarding the transaction in respect of property owned by the complainant. Notice dated 3rd March, 2012 issued to the complainant and his family members also supports the said fact. There is suit filed by the applicants against complainant and others wherein injunction has been granted directing to maintain status quo in respect of the suit property till final decision of the suit. All these facts clearly indicate that essentially this is a civil dispute. The genuineness of the transaction as well as documents in question is subject matter of the suit pending before the competent civil court. This is not the case wherein custodial interrogation is necessary for recovery of any incriminating material.

6. Hence, there is no propriety in denying the liberty to the present applicants after 11 years of the alleged transaction. In the circumstances, application is allowed in terms of interim order dated 24th March, 2023.

(R. M. JOSHI, J.)

ssp