

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 452 OF 2023

Sainath Mallu Pawar	... Applicant
<i>Versus</i>	
The State of Maharashtra	... Respondent

...
Mr. Satej S. Jadhav – Advocate for applicant
Mrs. Geeta L. Deshpande – APP for respondent/State

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CORAM : R. M. JOSHI, J.
DATE : 27th JUNE, 2023

PER COURT :

1. The applicant is apprehending arrest in connection with Crime No. 0278 of 2022 registered with Chalisgaon Rural Police Station, Dist. Jalgaon for the offence punishable under Sections 447, 448, 454, 457 and 380 of the Indian Penal Code.

2. Informant while reporting the incident stated that on 02.05.2022, she left the house by locking it and when she came back from Nashik on 16.05.2022 at around 01:30 p.m. she found her house open. When she entered her house, she found her nephew Sadanand present in the house. She noticed that the household articles

including LED, Freeze, T.V., Mixer and Cooler were missing. Said Sadanand informed her that applicant Sainath Mallu Pawar has taken away these articles from her house. On the basis of the said information, the report came to be lodged.

3. Learned counsel for the applicant states that there is civil dispute between the parties in respect of the transactions of three properties. He contended that the suit is filed before the competent court. According to him, the present complaint is nothing but an attempt to pressurize the applicant to settle the dispute, which is civil in nature.

4. Learned APP and the learned counsel appearing for the informant referred to the statements made in the FIR, wherein there are specific allegations against the applicant that he has taken away all the aforementioned articles which were in the house and thereby committed theft. Learned counsel for the informant has sought to argue that though the sale deeds were executed in respect of two properties, the applicant – Sainath and his brother did not pay the consideration amount and cheated the informant. It is further

submitted that it was agreed to execute sale deeds in respect of the lands only and not with respect to the house property but the applicant has obtained the document by misrepresentation. Learned APP relied upon the station diary entry in order to point out that wife of the preset applicant has made a statement that the said house was locked by the owner of the house.

5. It is submitted that when the registered sale deeds were to be executed in respect of the lands only, the document in question came to be obtained from the informant and her son by playing fraud. The contention of the prosecution is that, the custodial interrogation of the applicant is necessary for the purpose of recovery of the household articles.

6. Perusal of the FIR though shows that it is the contention of the informant that on 16.05.2022 when she reached home she found door of her house open and when she entered the house she found presence of her nephew Sadanand. As against this she made a complaint to the Police Inspector, Police Station Chalisgaon on 16.05.2022, which shows that when the informant came to her house

no one was found there and that accused no. 4, his wife, daughter and other 5-7 unknown persons came and they entered in the house of the informant and they also abused and threatened her. Pertinently, these allegations are missing in the FIR. It may be noted that the FIR is not in cyclopedia but it cannot be accepted that such an important point is missed out in the FIR while recording the report. This assumes more importance in view of the pending civil dispute between the parties.

7. Admittedly, there is a dispute between the informant and the applicant over the transactions of sale of her properties. The suit is also pending to that effect. In this backdrop, the discrepancies in the FIR cannot be ignored. A specific query was put to the learned APP as to whether the statement of any neighbouring person was recorded in order to ascertain that the articles are removed from the house of the informant. In this regard, perusal of the investigation papers show that no such statement of any neighbouring person was recorded. If the articles like TV, Freeze, LED were stolen from the house of the informant, at least someone ought to have noticed the said fact.

8. Considering the discrepancies in the FIR and having regard to the pendency of disputes between the parties, this court has reason to accept the submissions of the learned counsel for the applicant that this could be a case of false and over implication of the applicant. After granting interim relief, the applicant has attended the concerned police station and there is no allegation of misuse of the liberty. In view of these facts, the application is allowed in terms of the interim relief granted on 30th March, 2023.

9. The applicant is directed to attend the concerned police station as and when called with written intimation.

[R. M. JOSHI]
JUDGE