

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

CRIMINAL BAIL APPLICATION NO. 479 OF 2023

Kuldipsingh Balwantsingh Soni
Adult Indian Inhabitant, Age : 62 Years,
Residing at : 33/1, Ward No.26,
Santrabadi, District : Durg,
State : Chhatisgarh

...Applicant

vs.

The State of Maharashtra
[Through Vasai Police Station]

...Respondent

Ms.Tripti R. Shetty a/w Mr.Suresh Jhambhali, Advocates for
Applicant.
Mr.H.J.Dedhia – APP for the Respondent – State.

CORAM : S. M. MODAK, J.

DATE : 18th MARCH, 2023

P. C. :-

1. Heard learned Advocate Ms.Tripti Shetty for the Applicant and learned APP Shri.H.J.Dedhia for the Respondent-State.
2. Considering the fact that bail is asked on medical reasons as an additional ground, this matter is kept today.
3. I have heard both the sides on the point of merits as well as medical grounds.

4. One Dwarkanath Ramlal Tiwari is an owner of land bearing Survey No. 376, Hissa No.1, situate at Mauje Virar, District : Palghar. He stays in Virar. By impersonating himself, Accused No.1 has executed various sale-deeds in favour of various persons. One of such deed of conveyance is executed and registered on 31rd December, 2020 in favour of Vilas Rao Raghunathrao Bhawar – partner of Shri Hari Vishnu Builders and the consideration is Rs.5,00,00,000/- and stamp duty of Rs.1,37,50,000/- was also paid by Shri Hari Vishnu Builders. The said Vilas Rao Bhawar is a witness.

5. The real Dwarkanath Tiwari came to know that various sale-deeds are executed by impersonating himself and accordingly, he lodged an FIR with Vasai Police Station. Initially, he lodged a written complaint and then, FIR came to be registered on 12th November, 2021 under Sections 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code, 1860 [“IPC”]. All the persons named in the FIR were not charge-sheeted. Present Applicant is one of the persons named in the FIR and he is also charge-sheeted.

6. The sum and substance of the allegations is that the present Applicant has convinced the purchaser Vilas Rao Bhawar to purchase the said land. He represented him that the owner is selling the land at a cheaper rate for the reason that there is a terror of one Bhai

Thakur in that area. Witness Surendrakumar Rathi and Sandipkumar Yadav have also assisted. As said above, the deed of conveyance was also executed. The allegation of the Prosecution is that in fact, the present Applicant was knowing that the person with whom, the transaction is to be entered into, is not the real Dwarikanath Tiwari. In order to substantiate this allegation, the Prosecution claims that this Kuldeep Singh Soni/applicant has initially entered into one agreement with fictitious Dwarka Nath Tiwari for the purpose of purchase of that land. His real photograph is affixed, whereas, bogus photograph of Dwarikanath is annexed. The Prosecution claims that subsequently, this transaction was cancelled mutually by entering into a separate agreement with the said fictitious Dwarikanath Tiwari.

7. It is further contended that money paid by the purchaser of the deed of conveyance is deposited in the fictitious account of said Dwarikanath Tiwari in ICICI Bank. The Applicant has given introduction by opening a Bank account. His mobile number is there on a statement of account on Page No.1183. My attention is invited to various entries showing withdrawal by the Applicant from that account.

8. There is one offence registered against the present Applicant at

Mohannagar, District : Durg, Madhya Pradesh under Sections 420, 294 506(B) of IPC. In addition to that, Accused No.1 has given a statement under Section 164 of the Code of Criminal Procedure, 1973 ["Cr.P.C."] wherein he has explained as to how this Applicant and others have forced him to execute a sale-deed and how they have withdrawn the amount.

9. According to the Applicant, in fact, the Applicant has no role to play in respect of preparation of these documents and there is no loss to the Applicant. Reliance is placed on the report dated 20th January, 2022 sent by the Investigating Officer when the Bail Application was filed before the Court of Additional Sessions Judge. The ground Nos. 6 and 8 are read over. It is also contended that the various persons to whom, this fictitious Dwarikanath has sold the land earlier to the deed of conveyance in question, are not charge-sheeted and even their statements are not recorded. Learned Advocate for the Applicant read over the statement of Surendrakumar Rathi. It is submitted that the purchaser has paid stamp duty of Rs.1,37,50,000/- and why he will pay unless he is satisfied with the identity of the real Dwarka Nath Tiwari.

10. On account of health, reliance is placed upon his ailment, earlier to arrest and recent report submitted by the Superintendent

of Thane Central Prison dated 15th February, 2022. It says about facial paralysis. The doctors have advised for city scan of brain but Applicant was not sent to JJ Hospital for want of escort. The Applicant is also a senior citizen.

11. If merits are considered, I do not think that Applicant is entitled for bail. He is a witness to the deed of conveyance. He is a person who has initially transacted with that fictitious Dwarikanath Tiwari and he is the person in whose name, there are withdrawals from the fictitious account of ICICI Bank. So, there are sufficient materials which show his involvement.

12. So far as the medical grounds are concerned, it may be true that he may be having some ailments but direction can be given to the Hospital Authorities and Jail Authorities to provide him the treatment. As on today, it does not reveal that the ailment is of such kind for which, no treatment can be given in Government Hospitals. There may be delay in sending him to hospital but it can be taken care by issuing directions.

13. Let the city scan of his brain be done. Depending upon further outcome of medical examination, the Applicant can ask for bail, if no treatment can be given with reasonable promptitude.

14. Hence, following order is passed :-

O R D E R

- (i) Application is rejected.
- (ii) The Superintendent of Thane Jail is directed to send the Applicant to J.J. Hospital for city scan of brain within 15 days from today. Order be communicated to him.
- (iii) He is directed to see that escort may be made available from Headquarters.
- (iv) The Administration attached to J. J. Hospital is directed to perform city scan of brain and to submit a report to the Court of JMFC – Vasai.
- (v) The Applicant is at liberty to ask for necessary direction from the concerned Court.
- (vi) After outcome of city scan of brain, Applicant is at liberty to pray for bail depending upon the situation from the concerned Court of JMFC. It be decided on merits.

15. It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

16. Application is disposed of in the aforesaid terms.

17. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]