



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.978 OF 2023**

Swapnil Kondiram Popere ... Applicant
versus
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.1419 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.978 OF 2023

Sanatkumar Kulvant Singh Chouhan ... Applicant/Intervener
and
Swapnil Kondiram Popere ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Ashok Mundargi, Sr. Advocate with Mr. Subir Sarkar, for Applicant.
Mr. M.G.Patil, APP for State.
Mr. Nitin Gaware-Patil i/by Mr. Sachin Thorat, for Intervener.

CORAM: N.J.JAMADAR, J.

DATE : 10 OCTOBER 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with C.R.No.38 of 2023 registered with Kalamboli Police Station for the offences punishable under Sections 120B, 420, 464, 465, 468, 471 441, 447 of the Indian Penal Code.
3. The first informant's brother in law – Suresh Pal @ Suresh Gajraj Singh Pundir is based at Saudi Arabia. In the year 1996, Suresh was allotted a row house plot

No.A-18 at Sector 14, Kalamboli by the CIDCO. On 2 January 2022, when the first informant and Suresh visited the said plot, they found that a four storied building was constructed thereon. In the inquiry with CIDCO, it transpired that in the year 2017, by setting up an impostor and in connivance with the officers of CIDCO, permission to transfer the said plot was obtained and, eventually, a registered instrument came to be executed in favour of Amit Pathak. Thereafter, on 18 December 2017, a tripartite agreement came to be executed between Amit Pathak, CIDCO and the applicant. The first informant, thus, realized that on the basis of the false and forged instruments and by setting up an impostor, the applicant and others defrauded Suresh Pal. Hence, the report.

4. By an order dated 3 April 2023, this Court was persuaded to grant interim protection.

5. I have heard Mr. Mundargi, learned Senior Advocate for the Applicant, Mr. Patil, learned APP and Mr. Nitin Gavre-Patil, learned Counsel for the first informant-intervener.

6. Mr. Mundargi submitted that the applicant is a bonafide purchaser for value. The Applicant had parted with consideration in favour of Amit Pathak, his predecessor in title, through banking channel. On the strength of the registered instrument, the applicant purchased the said plot. There is no material to indicate that the applicant was a privy to the alleged fraud. At any rate, the allegations appear to be

that the property came to be transferred in the name of Amit Pathak by practicing fraud. Therefore, at this stage, custodial interrogation of the applicant is not warranted.

7. The learned APP resisted the prayer for pre-arrest bail. It was submitted that the applicant is the ultimate beneficiary and has erected a four storied structure. Therefore, the applicant does not deserve the exercise of discretion.

8. Mr. Patil, learned Counsel for the Intervener, took the Court through the instrument executed in favour of Amit Pathak, by setting up an impostor, and in favour of the applicant by the said Amit Pathak. An endeavour was made to draw home the point that the applicant had known that Suresh was the original allottee of the said plot. Comparing and contrasting the signatures of said Suresh, on the original documents under which the said plot came to be allotted to him, and the signatures on the allegedly fraudulent instruments, Mr. Patil would urge that it is only the custodial interrogation of the applicant that would unearth the fraud.

9. Mr. Patil also invited the attention of the Court to an order passed by this Court on 21 April 2023 in ABA No.1132 of 2023 whereby the application of the co-accused Sachin Pawar came to be rejected.

10. I have perused the said order. This Court was persuaded to reject the application as it transpired that the said co-accused had received an amount of Rs.9.33 Lakhs from the impostor and there were four similar crimes registered against the said

co-accused who claimed to be a real estate agent. The Court, thus, noted that there was some sort of racket and, therefore, the custodial interrogation of the said accused was warranted.

11. The case of the applicant, prima facie, stands on a different footing. The gravamen of indictment is that in the year 2017, by setting up an impostor, and in connivance with the officers of CIDCO, the said plot was transferred in the name of Amit Pathak. The Applicant is evidently a subsequent transferee, from Amit Pathak. There is material to indicate that the applicant has parted with consideration through banking channel. Conversely, there is no, prima facie, material to show that there was any nexus of the applicant with the persons who got a fraudulent instrument registered in favour of Amit Pathak. The mere fact that in the instrument executed in favour of the applicant, there is a reference to the original allotment in favour of Mr. Suresh Pal, by itself, does not incriminate the applicant. That reference seems to be an exercise to trace title to the property.

12. The situation which, thus, emerges is that the applicant, prima facie, appears to be a bonafide purchaser for value and there is no material to connect the applicant with the alleged fraudulent transfer of the property in favour of Amit Pathak, the applicant's predecessor in title. Undoubtedly, the lawful title of the applicant to the said plot may be in jeopardy. However, that cannot be a ground to deprive the applicant of the relief of pre-arrest bail.

13. I am, therefore, inclined to exercise the discretion in favour of the applicant while directing him to join in the investigation.

14. Hence, the following order :

ORDER

(i) In the event of the arrest of the Applicant – Swapnil Kondiram Popere in connection with C.R.No.38 of 2023 registered with Kalamboli Police Station, the Applicant be released on bail on furnishing a PR bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

(ii) The Applicant shall co-operate with the investigation and report to Kalamboli Police Station on 19th, 20th and 21st October 2023 in between 10.00 a.m. to 1.00 p.m.

(iii) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the prosecution witnesses or any of the persons acquainted with the facts of the case.

(iv) The Applicant shall produce the documents which are in his custody, as may be directed by the Investigating Officer.

(v) The applicant shall also furnish his specimen hand writing and signature to the Investigating Officer.

(vi) The Applicant shall regularly attend the proceedings before the jurisdictional Court.

- (vii) The application stands disposed.
- (viii) The Interim application also stands disposed.
- (ix) It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N.J.JAMADAR, J.)