

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2378 OF 2023

Balu Santu Shinde ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Harsharaj Jagtap a/w. Mr. Shubham Kadam i/b. Mr. Vishal Kolekar, for the Applicant.

Ms. A.A. Takalkar, APP, for the Respondent/State.

Mr. Santosh Jadhav, API, Vadgaon-Maval police station present.

CORAM : N. J. JAMADAR, J.

DATE : AUGUST 28, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 102 of 2022 registered at Vadgaon-Maval police station for the offences punishable under sections 420, 465, 467, 468, 471 read with 34 of Indian penal Code, 1860.

3. The indictment against the applicant is that the applicant represented to the first informant that he was the owner of agricultural land bearing survey No. 268 admeasuring 2 Acres, 10.4 Guntha situated at village Shivane, Tal. Maval, Dist. Pune. The applicant claimed that he had purchased the said land from Mrs. Rama Ambaprasad Shastri and Aambaprasad Shastri under the

registered Sale Deed bearing Register No. 5722 of 2015. On the basis of the said representation, the applicant executed a registered Sale Deed on 15th December, 2016 in favour of the first informant and thereby transferred the said land for a consideration of Rs. 45,60,000/-. The applicant had also sworn an affidavit proclaiming valid title to the said land.

4. The first informant further alleged that the applicant continued to have negotiations with the first informant to sale another parcel of land admeasuring 32 Acres out of survey Nos. 268, 112, 113, 119 and 278. Allegedly, the applicant accepted a sum of Rs. 2,19,40,000/- from the first informant in cash and through cheques, over a period of time. Since the applicant could not get the name of the first informant mutated to the record of right of survey No. 268 till 2019, upon inquiry, the first informant learnt that before executing the Sale Deed in respect of the said land bearing Gut No. 268 on 15th December, 2016, the applicant had already re-conveyed the said land to the original owners Rama Shastri and Aambaprasad Shastri under a registered Sale Deed and thereby deceived the first informant.

5. The applicant admitted the fraud by executing an indemnity on 16th April, 2019 and a Memorandum of Understanding dated 4th March, 2022 and assured to execute the Sale Deed of the land

admeasuring 34.5 Acres. Neither the Sale Deed was executed nor the consideration was refunded. Hence, the report.

6. The learned counsel for the applicant submitted that the alleged offences revolve around the documents. The applicant is ready to cooperate with the investigation and abide by the terms which this Court may impose. In view of the nature of the accusation, according to learned counsel for the applicant, custodial interrogation of the applicant is not at all warranted. An endeavour was made to urge that inordinate delay in lodging the report impairs the prosecution. Therefore, the applicant be granted pre-arrest bail.

7. The learned APP, on the other hand, resisted the prayer for pre-arrest bail. It was submitted that there is material on record to show that the applicant had executed a registered Sale Deed in respect of the land which he had already re-conveyed to his vendors. The applicant acknowledged the fraudulent transaction by executing the indemnity and Memorandum of Understanding. The learned APP further submitted that the statement recorded during the course of investigation further revealed that the applicant had executed more instruments in respect of the very same land in favour of other persons as well and duped them in similar fashion. Thus the custodial interrogation is warranted. Therefore, the

applicant does not deserve the exercise of the discretion.

8. So far as the allegations that the applicant had professed to convey the land bearing survey No. 268 under the registered Sale Deed on 15th December, 2016, the execution of the said instrument as such, prima facie, does not seem to be in contest. In the application, the applicant attempted to wriggle out of the situation by asserting that though the instrument is not executed, the first informant had not parted with the consideration.

9. The copies of the indemnity and MOU, tendered for the perusal of the Court by learned APP, do indicate prima facie that the applicant had re-conveyed the said land in favour of the original holder Rama Shastri and Aambaprasad Shastri on 29th October, 2015. If that was the case, the execution of the registered Sale Deed in respect of the very same land in favour of the first informant can prima facie be said to be actuated by a design to defraud the subsequent purchasers as the applicant can be attributed with the knowledge that he had no title to convey.

10. What exacerbates the situation is, not only the acknowledgment of the alleged fraudulent transaction but the execution of two further instruments in respect of the very same property. The statements of Vaishali Ghare @ Kale and Dattatray Gaikwad do indicate that the applicant had professed to execute an

earnest note in respect of the very same land in favour of Vaishali Ghare on 7th November, 2015 and a registered Sale Deed on 20th April, 2019 in favour of Dattatray Gaikwad and accepted consideration thereunder.

11. Prima facie, there is material to show that the applicant professed to transfer the very same property to successive purchasers dishonestly. Both the elements of deceit and injury are prima facie made out.

12. In view of the above, I am inclined to hold that there is a strong prima facie case against the applicant which warrants investigation. Interrogation of the applicant is indispensable for effective investigation. This is not a case where discretion to grant pre-arrest bail can be exercised.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)