

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.105 OF 2023

Nilesh Bhagwantrao Bhasme

Vs.

State of Maharashtra, through PSO, PS Gadgenagar, Amravati.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.A. Gupta, Advocate for applicant.

Shri S.M. Ghodeswar, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : JUNE 21, 2023.

The present application is for seeking pre-arrest bail in connection with the Crime No.71/2023 registered with Police Station, Gadgenagar, Amravati for the offences punishable under Sections 420, 468, 471 of the Indian Penal code.

2. The applicant is apprehending arrest at the hands of Police as Pravin Natthuji Deshmukh has lodged report on an allegation that he entered into an agreement with the present applicant to purchase a flat situated at Arjun Nagar for the consideration of ₹22,50,000/-. Accordingly, on 30.05.2016, the informant has paid consideration amount of ₹21,50,000/- and it is agreed that on the date of execution of the sale deed remaining amount of ₹1,00,000/- is to be paid. However, the present applicant has not executed the sale-deed in his favour and also returned back his amount. Subsequently, the applicant has sold out the said flat to the

third person namely Dnyaneshwar Namdeorao Adhaoo. Thus, the present applicant has duped him for ₹21,50,000/-. On the basis of said report, the police has registered the crime against the applicant.

3. As per the contention of the present applicant, there was transaction between him and informant of a hand loan. The present applicant has obtained the hand loan and issued blank cheques and blank stamp papers to the informant. The informant has misused the same and prepared the agreement to sell, which is not at all executed by the present applicant. The dispute between the parties is of civil nature. The custodial interrogation of the present applicant is not required and hence, he be released on anticipatory bail in the event of his arrest.

4. The application has strongly opposed by the State on the ground that though the present applicant entered into an agreement with the informant and accepted the consideration amount, however, not executed the sale-deed. There was an intention since inception and therefore the applicant has executed the sale-deed in favour of the third person. The *prima facie* material collected during the investigation shows that the present applicant is involved in commission of the crime. It is further submitted that the amount of ₹21,50,000/- is to be recovered from the present applicant. Therefore, custodial interrogation is required. He has not cooperated with the investigating agency and on that ground also the application deserves to be rejected.

5. Heard Shri N.B. Raut, learned counsel for the applicant. He reiterated the contention and submitted that considering the allegation as it is, the nature of dispute is of civil nature. The informant has already filed a civil suit for the specific performance, which is pending. As the informant has not succeeded in getting the relief, he filed false report after lapse of six years. The custodial interrogation of the present applicant is not required and hence he be protected by granting anticipatory bail.

6. Shri M.J. Khan, learned APP submitted that considering the fact that the present applicant has executed sale-deed in favour of third person shows his intention to cheat the informant. Though the dispute is of civil nature but considering the huge amount is involved, his physical custody is required. Hence, the bail application be rejected.

7. Having heard both sides, perused the application as well as investigation papers, it appears that there was an agreement between the applicant and the informant. In view of the said agreement sale-deed was not executed. It further reveals that Summery Criminal Case No.606/2017 is also filed by the informant under Section 138 of the Negotiable Instruments Act, which is pending. As per the defence of the present applicant, he has obtained the blank cheques and blank stamp papers and informant has misused the same. It is matter of evidence and said defence can be taken by the applicant in the case under Section 138 of the Negotiable

Instruments Act. At present, it is to be seen whether there is *prima facie* material to show the intention of the present applicant since the inception. It reveals from the recitals of the FIR that there was an agreement of sale between the parties but the sale-deed was not executed. Thus, *prima facie*, from the recitals of the FIR shows that there is a breach of an agreement.

8. This Court while considering the interim anticipatory prayer already referred the observations of the Hon'ble Apex Court in case of ***Arnesh Kumar V/s State of Bihar***, reported in ***(2014) 8 SCC 273*** and ***Satender Kumar Antil V/s Central Bureau of Investigation and another***; reported in ***(2022) 10 SCC 51***. In the case of ***Anresh Kumar***, the Hon'ble Apex Court in paragraphs 11 and 12 has already held that the police officer shall forward the check list duly filed and furnish the reasons and material which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention. It is further held by the Hon'ble Apex Court that notice of appearance in terms of Section 41 of the Code of Criminal Procedure be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in

writing. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action.

9. Thus, in view of the observations of the Hon'ble Apex Court the investigating officer has to satisfy himself whether the arrest of the applicant is required or not and that satisfaction shall be reduced into writing. Here in the present case, such satisfaction is not putforth by the investigating officer and also not expressed any reasons for the necessity of the arrest of the present applicant. *Prima facie*, it reveals that the nature of the dispute between the parties is of civil nature. Considering the same, custodial interrogation of the present applicant is not required immediately. As far as the interrogation is concerned, physical custody of the present applicant is not required. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- i. The application allowed.
- ii. In the event of arrest, applicant - Nilesh Bhagwantrao Bhasme, in connection with Crime No.71/2023 registered with Police Station, Gadgenagar, Amravati for the offences punishable under Sections 420, 468, 471 of the Indian Penal Code, be released on bail on he executing PR bond in the sum of Rs.25,000/- with one surety in the like amount.

- iii. The applicant shall attend Police Station, Gadgenagar, Amravati once in a week on Sunday between 10.00 a.m. to 1.00 p.m., till filing of the charge-sheet.
- iv. The applicant shall furnish his cellphone number and address with the address proof. The applicant shall furnish the names of his two nearest relatives alongwith their cellphone numbers and address proof.
- v. The applicant shall not induce, threaten or pressurize any witness, who are connected with the alleged crime.
- vi. On failure to comply the conditions, the State is at liberty to file appropriate application for cancellation of bail.

With this, the application is disposed of.

JUDGE

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