IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 326/2023

VIVEK DADURAM SATHE
VS
STATE OF MAH. THR. PSO, BORI, NAGPUR DIST. NAGPUR.

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Mr A.M.Chandekar, advocate for the applicant.
Mr A.M.Kadukar, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09/06/2023.

1. Heard.

2. By this application, the applicant is seeking anticipatory bail in the event of his arrest in respect of Crime No.367/2021 registered with the Police Station Buti-Bori, Nagpur for the offences punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code.

3. The applicant is apprehending arrest at the hands of Police as Buti-Bori Police have registered the offence against the total five persons. As per the allegations in the FIR, the informant had agreed to purchase land from M/s Trimula Developers and Vyankatesh Asset Maximier Pvt Ltd., Subsequently, both the firms have not executed any sale-deed in favour of the informant, though they have

obtained the money from informant. Regarding the said incident, informant has lodged the report against the Directors of both the firms, on an allegation that, though they have agreed to sell the land to the informant and accepted the amount of Rs. 78,52,000/- and no sale-deed is executed in favour of the informant.

4. As per the contention of the applicant, he became the Director of the firm Vyankatesh Asset Maximier Pvt Ltd., on 08/05/2016. The alleged transactions took place initially on 07/08/2015, prior to that, one agreement of sale was executed on 17/08/2013. At the time of both the agreements, the applicant was not at all Director of firm Vyankatesh Asset Maximier Pvt. Ltd and he was not at all concerned with the firms. Merely because he became Director on 08/05/2016, his name is implicated in the alleged offence. His physical custody is not at all required as he was not aware about the transaction and not the signatory of the said transaction. Therefore, he be protected by granting anticipatory bail.

5. The said application is strongly opposed by the State. On the ground that the bail applications of co-accused are already been rejected by this Court by observing that the amount involved is huge amount of Rs. 78.52 Lacs and the complainant was duped for the huge amount and therefore, custodial interrogation is required. In light of the earlier order, the application of the present applicant deserves to be

rejected. It is further submitted that on behalf of the State that custodial interrogation of the present applicant is required as investigation is yet to be completed and the role of the present applicant is yet to be ascertained. Hence, the application deserves to be rejected.

6. Heard learned advocate Mr A.M. Chandekar for the applicant. He vehemently submitted that the investigation papers itself show that the applicant was not the Director of the said firm till 08/05/2016. The investigation officer has also collected the relevant documents and Master Data, wherein it is shown that first time present applicant is added as Director on 08/05/2016. The investigating officer has also collected all the documents i.e. agreements which were executed initially in the year 2013 and on 07/12/2015. The applicant was neither signatory of the said documents nor the Director of the firm, at the relevant time. As the sale deed was not executed in favour of the informant and in the meantime the applicant became Director, he is falsely implicated in the alleged offence. As the applicant was not at all concerned with the said crime, his custodial interrogation is not at all required, his name is also not mentioned in the FIR. Hence, he be protected by granting anticipatory bail.

7. Learned APP though strongly objected the application and fairly admitted that the investigation paper shows that the applicant become the Director of the firm,

on 08/05/2016. Prior to that, he was not concerned with the firm. He has submitted that, however, the custodial interrogation of the present applicant is required to ascertain whether he is benefited by the alleged Act of the Co-Directors and prayed for rejection of the bail.

8. Perused the application and the recitals of the FIR. It revealed that charge-sheet is filed against the other co-accused. During the investigation, Investigating Officer investigated and collected the relevant documents. The earlier agreement between the parties took place on 17/08/2013. Admittedly, the present applicant was not signatory to the agreement dated 17/08/2013 nor he has signed the subsequent agreement dated 07/08/2015. The statements of the relevant witnesses are also recorded and Master Data of both the firms is also collected. From the Master Data, it is apparent that the present applicant become the Director of the said firm, first time on 08/05/2016. This fact clear that the applicant was not at all concerned with the alleged offence where the initial agreement is executed in favour of the informant.

9. While considering the anticipatory bail, the directors of the Hon'ble Apex Court in the case of ***Satender Kumar Antil Versus Central Bureau Of Investigation & Anr reported in 2022 (10) SCC 51*** are to be looked into. The Hon'ble Apex Court has observed that under Section 41 under Chapter (V) of the Court deals with the arrest of a

person even for a cognizable offence and arrest is not mandatory can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offence, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offence, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the Court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.

10. In view of the above guidelines, no satisfactory reason came before the Court to show the need of the arrest of the present applicant as he was not at all concerned with the alleged with the above firms, when two agreements are executed. In the above circumstances, it is a fit case wherein the applicant is to be protected by granting anticipatory bail. In view of the above, I pass the following order:

a) Criminal Application is allowed.

b) Applicant -Vivek Daduram Sathe is released on anticipatory bail in the event of his arrest in connection with No.367/2021 registered with the Police Station Officer Buti-Bori, Nagpur for the offences punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code, on executing P.R.Bond of Rs. 30,000/- with one solvent surety in the like amount.

c) The applicant shall attend the concerned Police Station as and when required for the investigation purpose.

d) The applicant shall submit his cell phone number and address along with address proof. He shall also submit the names of his two nearest relatives along with address proof.

e) The applicant shall not induce, threat or promise any of the witness who are connected with the present crime.

f) The breach of any condition, deserves for cancellation of bail.

JUDGE

Signed By:RAJESH K NANDURKAR

Signing Date:13.06.2023 18:55

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