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

CRIMINAL APPLICATION (ABA) NO.683 OF 2023

(Kishor s/o Yadavrao Ruikar Vs. State of Maharashtra thr. its PSO PS Dattapur, Tq. Dhamangaon Railway, District Amravati)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders. *Court's or Judge's orders.*

Mr. Akshay Naik, Advocate with Mr. P. R. Agrawal, Advocate for Applicant.
Mrs. M. A. Barabde, APP for Non-Applicant/State.

CORAM: URMILA JOSHI PHALKE, J.
DATE: 5th DECEMBER, 2023.

By preferring this application, the applicant is seeking pre-arrest bail in connection with Crime No.494/2023 registered with Police Station Dattapur, District Amravati for the offences punishable under section 199, 406, 409 and 420 read with section 34 of the Indian Penal Code.

2. The learned counsel for the applicant Mr. Naik submitted that the applicant is apprehending arrest at the hands of police as crime is registered against him on the basis of report lodged by Subhash Tukaram Ruikar who alleged that present applicant who is his cousin brother. They have also decided to sell out their house which is situated at Nargawandi, District Yavatmal and therefore, they all went in the Registrar Office at Yavatmal on 06.01.2014. As per the allegation present applicant has obtained all the documents from them and prepared the

forged power of attorney in his favour and obtained their signature. It is further alleged that on 04.07.2014 when the informant had been to the Registrar Office to obtain the certified copy, at the relevant time he realised that their signatures are obtained and forged power of attorney is prepared by the present applicant and one Ghanshyam Yadavrao Ruikar. Therefore, he approached to the police station and lodged the report. On the basis of said report police have registered the crime against the present applicant.

3. He further submitted that on perusal of the record it reveals that the allegation is made against the present applicant that he has prepared the forged power of attorney for sell of the house. In fact the house which is mentioned in the FIR was sold prior to 06.04.2014 it was sold on 05.04.2013 itself. Thereafter, he invited my attention to the power of attorney and submitted that recitals of the said power of attorney which was executed on 06.01.2014 shows that by the said power of attorney, the informant and other brothers and family members executed the power of attorney in favour of the present applicant for looking after the transaction regarding the agricultural land situated at Mouza Nargawandi, Tahsil Kalamb, District Yavatmal. In view of the said power of attorney the applicant was authorized to search customers for selling the said agricultural land, to sign on the agreement, to accept the earnest amount and to accept the sale amount to execute

the sale-deed etc. Subsequently, the said power of attorney is cancelled by the informant and his relatives on 31.07.2014. The recitals of the cancellation of the document nowhere show that the power of attorney executed in favour of the present applicant was fraudulent and it was the applicant who has prepared the same by obtaining the signatures. He further invited my attention to section 208 of the Indian Contract Act and submitted that the cancellation of the document which ought to have informed the present applicant by the informant and his other family members in view of section 208 of the Act which was not informed. He submitted that from the recitals of the FIR and the other documents it is crystal clear that vindictive FIR is lodged against the present applicant. As far as the custodial interrogation is concerned it is not required as entire case is based on the documents. He further placed reliance on ***Amar Nath v. Gian Chand and another*** reported in ***(2022) 11 SCC 460*** wherein the Hon'ble Apex Court has discussed the scope of section 208 in para Nos.73 and 74 and in para No.82 it is observed that "while on cancellation we may notice that the plaintiff, in his deposition, has stated that he had cancelled the power of attorney at Mehre and there itself was the office of the Sub-Registrar located. He has admitted that he did not get the power of attorney cancelled at the Sub-Registrar Office. Even, more importantly, he has admitted to not having sent any notice of cancellation. The only evidence consists of a statement of PW 1 that the first defendant was aware of the cancellation and the statement of PW 6, who had said that the first defendant was also there on 2-2-1987, when on two papers a line was drawn to signify the cancellation. The trial court and also the appellate court have relied upon the DX sent by the plaintiff himself, which appears to undermine the evidence about the cancellation on 2-2-1987. The High Court should not have, at any rate, disturbed the said finding in a second appeal. In such circumstances, the conclusion is inevitable that the case of the plaintiff that power of attorney stood cancelled, in the manner done on 2-2-1987, cannot be accepted. At any rate, we find it difficult to accept the case of the plaintiff that the first defendant, who is the third party, could be attributed any knowledge of the surrender or the alleged cancellation on 2-2-1987, even assuming for a moment that we could lend credence to the plaintiff's version in this regard that the second defendant surrendered the power of attorney."

Para No.83: We need not pronounce on the question whether the power of attorney being registered, it could be cancelled only by a registered power of attorney. This we say as even in the absence of a registered cancellation of the power of attorney, there must be cancellation and it must further be brought to the notice of the third party at any rate as already noticed. Such a cancellation is not made out.

4. He submitted that considering the law laid down by the Hon'ble Apex Court as far as the cancellation of the power of attorney is concerned, considering the recitals of

the FIR and the document which are produced on record which clearly shows that the FIR is lodged with the false allegation the custodial interrogation of the present applicant is not required and prays for release the applicant on bail in the event of his arrest.

5. The learned APP for the State strongly opposed the application on the ground that the present applicant has obtained the signature of the informant and other family members and prepared the forged power of attorney. The investigation is at initial stage and the custody of the present is required to find out who are the other persons involved in commission of the crime. He further submitted that the specimen signature of the present applicant and other relevant document which are produced before the Sub- Registrar Office at the time of execution of the sale-deed are required to be seized. In view of that the application deserves to be rejected.

6. Having heard the learned counsel for the applicant and the learned APP for the State. Perused the recitals of the FIR and other relevant documents which are filed on record as well as the investigation papers. From the recitals of the FIR it reveals that the informant has alleged that present applicant who is his cousin brother. He as well as other legal heirs of Ganpant Pralhad Ruikar decided to sale out the house which is situated at Yavatmal and therefore, they approached the Registrar Office at Yavatmal

on 06.01.2014. As per the allegation present applicant has obtained the document from him of the house and obtained their signature and prepared the forged power of attorney. The further grievance of the informant is that on 04.07.2014 first time he came to know regarding the forged power of attorney prepared by the present applicant. The learned counsel for the applicant placed on record the sale-deed of the house which is situated at Yavatmal. It reveals from the receipt issued by the Sub-Registrar Office, Yavatmal which shows that the house which is situated at Yavatmal was sold out on 05.04.2013 itself prior to 06.04.2014. The recitals of the power of attorney which was executed in favour of the present applicant also shows that the power of attorney never executed as regards the sale of the house but it was executed as regards the transaction which has to be taken place regarding the agricultural land which are situated at Dhamangaon Railway by the said power of attorney the applicant was authorized to search the customer, to enter into the agreement to execute the sale-deed to accept the earnest amount and to accept the consideration amount said power of attorney is executed on 06.01.2014 and subsequently on 31.07.2014 it was cancelled. Thus *prima facie* the allegation levelled against the present applicant in the FIR are not substantiated by the document which are registered document. As far as submission of the learned counsel regarding the cancellation of the power of attorney and reference under section 208 is concerned the Apex Court has discussed the scope of section 208 which says that the termination would be authority of an agent does not so far as regard the agent take effect before it becomes known to him. In short it should be informed to the person in favour of whom the said authority is executive. Considering the entire facts and circumstances of the present case, at this stage, I find that the custodial interrogation of the present applicant is not required as far as the seizure of the document is concerned which are the registered document. The Investigating Officer can obtain the said document from the Registrar Office. The Investigating Officer has recorded the various statements which also disclosed about the transaction regarding 06.01.2014 which is not substantiated by any of the document. In view of that application deserves to be allowed. Accordingly, I proceed to pass following order:

[i] The application is allowed.

[ii] The applicant be released on anticipatory bail in the event of his arrest in connection with Crime No.494/2023 registered with Police Station Dattapur, District Amravati for the offences punishable under sections 199, 406, 409 and 420 read with section 34 of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

[iii] The applicant shall attend concerned police station as and when required for the investigation purpose and shall co-operate in the investigation.

[iv] The applicant shall not tamper with the prosecution evidence or shall not induce, threaten or pressurize any witnesses, who are connected with the crime.

[v] The applicant shall furnish his mobile number and address with address proof.

7. The application is disposed of.

JUDGE

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