

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 410 OF 2024

Vishal Nilkanth Ghaitadak ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 875 OF 2024

Mr. Tapan Thatte, a/w Arvind Aswani, through VC, for the
Applicant.

Mr. Shailesh Ghag, APP for the State/Respondent.

Mr. Mohansingh Rajput, for the Intervener.

API Panhalkar, Shirur Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 27th FEBRUARY, 2024

ORDER:-

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

2. Mr. Rajput, the learned Counsel, seeks leave to tender
an application for intervention.

Leave granted.

Application for intervention is taken on record.

3. This is an application for pre-arrest bail in connection
with CR No.1406 of 2023, registered with Shirur Police
Station, Pune, for the offences punishable under Sections

406 and 420 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").

4. The first informant lodged a report with the allegations that co-accused Narendra Bodade and Bhalchandra Muke induced him to execute a Sale Deed 11th April, 2023 in respect of land admeasuring 45.5 Are for a consideration of Rs.3,67,00,000/-. The purchasers had delivered cheques towards the consideration. Those cheques were dishonored on presentment on 31st July, 2023.

5. In the intervening period, co-accused – purchasers had executed sale deeds in favour of the third parties including the applicant. Sale Deed was executed on 30th June, 2023 in favour of Sumit Tilekar and Shraddha Tilekar. Sale Deed was also executed in respect of a portion of the subject property in favour of Anilkumar Shivram Shelar and Jalinder Popat Shende. Sale Deed in respect of 11 Are of land was executed in favour of the applicant on 30th June, 2023.

6. The first informant alleged that the applicant had fraudulently purchased the portion of the property which the first informant had sold to co-accused Narendra Bodade and Bhalchandra Muke, though the applicant was aware that the

consideration had not been paid by the purchasers to the first informant.

7. The learned Counsel for the applicant submitted that having regard to the role of the applicant, being a purchaser of the portion of the subject property, the offence of cheating cannot be attributed to the applicant. Co-accused Anilkumar Shelar and Jalinder Shende and Shraddha Tilekar and Sumit Tilekar, who had purchased portions of the subject property alongwith the applicant, were granted pre-arrest bail. However, the application of the applicant came to be rejected on the ground that the applicant was aware of the fact that the consideration had not been paid by the purchasers – co-accused.

8. The learned APP and the learned Counsel for the first informant resisted the prayer for pre-arrest bail. The learned Counsel for the intervener invited attention of the Court to the transcript of the conversation between the first informant and the applicant, which according to the learned Counsel for the intervener, indicates that the applicant was aware of the fact that the consideration had not been paid. Therefore, the applicant was a privy to the offence of cheating, urged the learned Counsel for the first informant.

9. Evidently, the Sale Deed was executed on 11th April, 2023. It appears that the cheques drawn by the purchasers towards the consideration were dishonored on 31st July, 2023. The case of the first informant is that the contract became void as there was failure of consideration. In a transaction of sale the consideration can be paid or promised or partly paid and partly promised. In the circumstances, the question as to whether the Sale Deed became void for failure of consideration would be a matter for adjudication in an appropriate proceedings. Likewise, whether the subsequent Sale Deeds executed by the purchasers in favour of the applicant and the co-accused are valid would be a matter for adjudication.

10. In any event, the applicant, even if it is assumed that he was aware of the fact that the consideration had not been paid, cannot be attributed with elements of deceit coupled with injury. It is not the case that the applicant had made a false representation or induced the first informant to execute the sale deed in favour of the co-accused – purchasers. The transaction revolves around documents. In the circumstances, custodial interrogation of the applicant is not

at all warranted. I am, therefore, inclined to allow the application.

11. Hence, the following order:

: O R D E R :

- (i) In the event of arrest of the applicant in CR No.1406 of 2023, registered with Shirur Police Station, Pune, 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 cooperate with the investigation and attend Shirur Police Station on 5th 6th and 7th March, 2024 between 10.00 am. to 1.00 pm. and, thereafter, as and when directed.
- (iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons acquainted with the facts of the case.
- (iv) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (v) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

Application stands disposed.

In view of disposal of the ABA, interim application also stands disposed.

[N. J. JAMADAR, J.]