

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1193 OF 2024

Amol Balaram Phaste	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Dilip Kamat, Advocate a/w. Archana Tiwari, Prajakta Samant, Sirajuddin Shaikh, for the Applicant.

Ms. Rajeshree V. Newton, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 03rd MAY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.82/2023 registered at Badlapur (West) Police Station, District-Thane on 6.4.2023 under sections 420, 406 read with 34 of IPC.

2. Heard Mr. Dilip Kamat, learned counsel for the Applicant and Ms. Rajeshree Newton, learned APP for the Respondent-State.

3. The FIR is lodged by one Satya Yadav. She has stated that she had purchased a land at village Ambeshiv,

Taluka – Ambernath at Survey No.9, Hissa No.5 admeasuring 25 Gunthas from one Mahesh Phaste for Rs.5 Lakhs. It was through a registered sale deed. The informant was unable to look after that land and, therefore, she decided to sell that land. She decided to sell it to the brothers of Mahesh. They were Tushar Phaste and the present Applicant. The sale price was fixed at Rs.80 Lakhs. Tushar gave Rs.2 Lakhs by cheque to the informant. The balance amount of Rs.78 Lakhs was to be paid by Demand Draft at the time of registration. On 6.4.2023, the informant had gone to the Registrar's office with her relative Lalbahaddur Yadav and her cousin Sarita Yadav. At that time, the Applicant under some pretext took Lalbahaddur with him in his car. He gave Demand Draft No.031048 issued by Canara Bank, Kulgaon Branch and told him to make a phone call to the informant that he had received the D.D. and that she should sign the sale deed for registration. Accordingly the sale deed was registered at 4.30 p.m. on 6.4.2023. In the meantime, Lalbahaddur had taken photograph of the said D.D. in his mobile phone. The

Applicant and Lalbahaddur came to the Registrar's office after some time. When Lalbahaddur was handing over that D.D. to the informant, the Applicant took it with him on the pretext of taking photograph but afterwards he did not return it and instead gave some evasive replies. He gave some cheque instead, but the informant got suspicious about that cheque. She realized that she was cheated and, therefore, she lodged this FIR.

4. Learned counsel for the Applicant submitted that the sale deed mentions the sale price as Rs.2 Lakhs. There was no mention of Rs.78 Lakhs at all. He further submitted that the parties i.e. the informant and the Applicant's brother Tushar entered into another document which was a deed of cancellation. It was executed and registered on 25.5.2023. In that cancellation deed, there is a reference to the present C.R. No.82/2023. The recital further mentions that the parties had decided to mutually to cancel the sale deed dated 6.4.2023 and accordingly the sale deed was canceled. The amount of Rs.2 Lakhs was returned to the Applicant's brother Tushar.

5. Learned counsel, therefore, submitted that no loss is caused to the present informant.

6. Learned APP submitted that it is not a case of execution of the sale deed and the cancellation deed but the offence also pertains to preparing a forged D.D. The investigation has revealed that the D.D. which was shown by the Applicant to the informant and her relative was actually a forged D.D.

7. I have considered these submissions. At this stage, the question is whether any loss is caused to the first informant. The cancellation deed signifies that as of today the informant has not suffered any loss. The land is still in her name. The Applicant or his brother have not become owner of that land. The possession is still with the informant. Therefore, I do not see any reason for permitting custodial interrogation in these circumstances. As far as the forgery of D.D. is concerned, the investigating agency can continue with their investigation in that direction. If it turns that the cancellation deed was fraudulently executed, the informant

and the investigating agency are at liberty to move an application for cancellation of this order.

8. In this view of the matter, the Applicant can be protected under Section 438 of Cr.PC.

9. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.82/2023 registered at Badlapur (West) Police Station, District-Thane, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Anticipatory Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
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