IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1706 OF 2024

Ratanlal Gulabchand Gundecha … Applicant
vs.
The State of Maharashtra … Respondent

Mr. Nitin Gaware Patil a/w. Mr. Jay Salunke for applicant.

Mr. Mayur S. Sonavane, APP for respondent-State.

Mr. Shrikant K. Gurav, PSI, Police Station Bhosari, Pimpri-Chinchwad.

CORAM : MANISH PITALE, J.
DATE : 05th JULY, 2024

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. By this application, the applicant is seeking anticipatory bail as he apprehends arrest in connection with FIR No.0260 of 2024 dated 16.04.2024 registered at Police Station Bhosari, District Pimpri Chinchwad for offences under Sections 420, 468 and 471 of the Indian Penal Code, 1860.

3. As per the informant, who is Sub-registrar in the office of the Registrar at Bhosari, the applicant gave a false declaration when a sale deed was registered on 30.12.2015, whereby the applicant executed the sale deed as power of attorney holder of the original owner, in favour of his own wife. The Sub-registrar approached the police for registration of the offence, upon conducting an enquiry under Section 82 of Registration Act, 1908, after the original owner approached the office of the Sub-registrar, alleging foul play on the part of the applicant.

4. The material available on record indicates that the original owner had instituted certain proceedings for mutation in the record of rights and in that context, he allegedly became aware about the acts undertaken by the applicant, leading to the grievance being raised before the office of the Sub-registrar and eventually, led to filing of the present FIR.

5. The learned counsel for the applicant submits that the dispute is essentially civil in nature as the original owner had executed an agreement to sale in respect of the very same land on 22.07.1995 in favour of the applicant's wife and another relative. It is submitted that in the backdrop of the said agreement to sale, an amount of ₹ 2,80,000 was paid to the original owner by a cheque dated 21.09.1995, copy of which is annexed at Exhibit A to the application. Copy of a voucher said to have been executed by the original owner, showing receipt of the amount is also placed on record alongwith the application. It is stated that the total agreed consideration between the parties was ₹ 4,55,000 and that the balance amount was allegedly paid by cash. Today, the learned counsel for the applicant has tendered a compilation of documents which contains copy of a notarized power of attorney executed on a stamp paper dated 14.07.1995 and signed and executed on 14.10.1995. It is the case of the applicant that on the strength of the said power of attorney, the registered sale deed dated 30.12.2015 was executed by the applicant, as power of attorney holder of the original owner. Copy of the registered sale deed is already on record with the present application. Reliance is placed on behalf of the applicant on the contents of the said notarized power of attorney, which shows that it was executed by the original owner in favour of the applicant.

6. Reliance is placed on the contents of the said documents and attention of this Court is further invited to the copy of a plaint, showing that the original owner has filed a civil suit before the competent Civil Court on 04.07.2024 against the applicant and his wife for cancellation of the said power of attorney and for declaration that the registered sale deed dated 30.12.2015 is void, *ab initio* and not binding on the original owner. An application for temporary injunction is filed therein. The Civil Court has issued notice to the applicant for temporary injunction. But, there is no ad-interim order passed in the said proceedings. On this basis, it is specifically submitted that the dispute is of civil nature and as the applicant is ready to co-operate with the investigation, this Court may favourably consider the present application.

7. The learned APP vehemently opposed the present application. The investigation papers are relied upon and it is specifically stated that the Sub-registrar, in the statement leading to registration of FIR, has alleged that the declaration given by the applicant, wherein the registered sale deed was executed on 30.12.2015, was a false declaration and that a copy of agreement to sale was passed off as copy of power of attorney, when the registered sale deed was executed. This is the basis for registering the aforementioned offences against the applicant. It is submitted that in such a situation, when the power of attorney was not even a registered document and a copy of the same was not placed before the office of the Sub-registrar, the applicant clearly committed the offence of cheating and other offences, thereby justifying his custodial interrogation. On this basis, the learned APP submitted that the application ought to be dismissed.

8. This Court has considered the documentary material available on record, while appreciating the rival submissions. The original owner has already filed the aforementioned suit against the applicant and his wife, seeking cancellation of power of attorney and for a declaration in respect of the registered sale deed dated 30.12.2015. An application for temporary injunction filed therein is pending consideration before the competent Civil Court. A copy of the cheque for an amount of ₹ 2,80,000 dated 21.09.1995 and a copy of the voucher said to have been issued by the original owner, indicate that specific amount appears to have been paid by the applicant to the original owner and this is proximate in point of time to the agreement to sale, followed by the power of attorney executed on 14.10.1995.

9. The applicant stated before the office of the Sub-registrar, when the registered sale deed dated 30.12.2015 was executed in the aforesaid declaration, that there was indeed a power of attorney and that the same had not been cancelled. It appears that when the registered sale deed was executed, copy of power of attorney was not placed before the office of the Sub-registrar and this appears to be the ground on which the Sub-registrar claims that a false declaration was made by the applicant. In fact, it is alleged that copy of agreement to sale was passed off as copy of power of attorney. If that be so, the sale deed ought not to have been registered by the office of the Sub-registrar. Therefore, at this stage, i.e. after about nine years, the office of the Sub-registrar has suddenly woken up to claim that a false declaration was made by the applicant. In any case, the applicant has made out a *prima facie* case in his favour, as the original owner also appears to have waited for all these years and then approached the office of the Sub-registrar, claiming foul play. At the same time, the original owner has instituted proceedings before the competent Civil Court for cancellation of

power of attorney and and for a declaration that the registered sale deed dated 30.12.2015 is void, *ab initio* and not binding on the original owner.

10. The totality of circumstances and the fact that the dispute does appear to have its roots in a civil dispute between the parties and also because the evidence in such matters is documentary, this Court is of the opinion that the applicant has made out a case for granting relief in the present application.

11. In view of the above, the application is allowed in following terms:

(i) In the event the applicant is arrested in connection with FIR No.0260 of 2024 dated 16.04.2024 registered at Police Station Bhosari, District Pimpri Chinchwad, he shall be released on bail on furnishing PR Bond of ₹ 50,000/- (Rupees Fifty Thousand only) and one or two sureties in the like amount to the satisfaction of the trial Court;

(ii) The applicant shall remain present before the Investigating Officer on 08.07.2024 and 09.07.2024 and thereafter, as and when the Investigating Officer calls upon him to remain present.

(iii) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case.

(iv) The applicant shall co-operate with the investigation and also in the proceedings before the trial court.

12. In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

13. Needless to say, the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial court shall

proceed further in the matter without being influenced by the observations made hereinabove.

14. The application stands disposed of.

(MANISH PITALE, J)

Priya Kambli