



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

CRIMINAL APPLICATION (BA) NO.51 OF 2024

Sunil s/o Ramesh Lede

Vs.

The State of Maharashtra, Through Police Station, Kalmeshwar,
District Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Anil S. Mardikar, Senior Counsel a/b Mr. D. N. Mehta, Counsel for the applicant.

Mr. D. V. Chauhan, Public Prosecutor with Ms. Soniya Thakur, APP for the respondent/State.

Mr. A. A. Mardikar, Counsel for assist to prosecution.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 27/06/2024

1. The applicant came to be arrested on 03.11.2023 in connection with Crime No.968/2023, registered with Police Station, Kalmeshwar, District Nagpur for the offences punishable under Sections 420, 467, 468, 471 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by Praduman Kumar Upadhya on an allegation that the present applicant with the original owner Raju Mishra entered into an agreement dated 18.08.2016 in respect of Survey No.17, admeasuring 1 H. 80 R. situated at Mouza Kalmeshwar for the consideration of Rs.1,35,60,300/-. It is further alleged that out of that applicant has not executed the sale deed of Plot

No.52 in favour of the informant, though he agreed to execute the sale deed and returned the amount through cheques of Rs.50,000/- but the said cheques were dishonoured. On the basis of the said report, police have registered the crime against the present applicant.

3. During the investigation, it revealed that in all 41 persons came forward by alleging the similar allegation against the present applicant that though he has agreed to execute the sale deed and accepted the consideration amount, but he has not executed the sale deed and thereby duped various persons. It further revealed that the complaints under Section 138 of the Negotiable Instruments Act are also registered against the present applicant. On the basis of the said report, police have registered the crime against the present applicant.

4. Heard learned Senior Counsel Mr. Mardikar for the applicant. He submitted that the original owner of the said property is Raju Jyotiprasad Mishra. He pointed out from the property cards and from the record of revenue that the said Raju Mishra is the owner of the said property. The said Raju Mishra entered into an agreement to sell with the present applicant and agreed to execute the sale deed of Survey No.17 situated Nagar Parishad, Kalmeshwar to the present applicant. Thereafter, permission to convert the land into non-agriculture was issued to

the original owner Raju Mishra. The said permission is also on record which shows that said permission was granted on 14.03.2018. The agreement to sell shows that it was the present applicant who has to develop the land and convert the land into non-agriculture (NA) and divided into plots and he shall enter into the transaction with the persons who intending to purchase the plots from the said land.

5. Learned Counsel further invited my attention towards the statement of Raju Mishra and submitted that if this statement is taken into consideration, then the offence under Sections 467 and 468 will not attract. He admitted that there are various transactions between the present applicant and the original owner. Subsequently, the original owner has cancelled the agreement in favour of the present applicant on 27.06.2022. As the rights were given to the present applicant by agreement to sell to develop the land and therefore, present applicant entered into an agreement with the various persons, but subsequently the original owner has executed the sale deed in favour of one Mukesh Anchalwar who was working with the said Raju Mishra. Thus, Raju Mishra has executed the said deed in favour of said Mukesh, when the earlier agreement with the present applicant was in existence. Admittedly, the agreement in favour of the present applicant was cancelled by the original owner, subsequent to the sale deed executed in favour of said Mukesh. He

submitted that considering the transaction that the applicant has accepted the amount and could not repay the same, at the most, offence under Section 420 of the Indian Penal Code will be made out and offence under Sections 467 and 468 of the Indian Penal Code is not made out against the present applicant. He submitted that now, the investigation is already completed and charge-sheet is filed. If only the offence under Section 420 of the Indian Penal Code is made out, then in view of the guidelines issued by the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.** reported in **2022 LiveLaw (SC) 577** wherein it is held that in view of Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of this provision.

6. There is no compliance by issuing the notice under Section 41. Now, the investigation is already completed and charge-sheet is filed. The applicant is for a sufficient period behind the bar and further incarceration of the present applicant is not required, in view of that, the applicant be released on bail.

7. Learned Public Prosecutor Mr. Chauhan with learned APP Ms. Soniya Thakur vehemently submitted that the documents on record i.e. the

application filed by the present applicant for measurement of the land shows the signature of the original owner Rajkumar Jyotiprasad Mishra, wherein the signature of said Mishra is forged by the present applicant. He also invited my attention towards one letter issued by the Rajkumar Jyotiprasad Mishra alleging that the present applicant has put his forged signatures and filed various applications with the Revenue Authority. The another application is also shown which was addressed to the Revenue Authority to compare the signature of the original owner and the forged signature. He submitted that on the basis of this document, it is crystal clear that the applicant has not only executed various agreement to sell in favour of the various purchasers that he has also forged signature of the original owner, therefore the offence under Sections 467 and 468 is made out. The investigation is still in progress, in all 41 persons came forward to show that present applicant has executed agreement to sell in their favour and not executed the sale deed and they were duped. Considering the all above circumstances, application deserves to be rejected.

8. After hearing the learned Senior Counsel for the applicant and learned Public Prosecutor for the State, perused the entire investigation papers, there is no dispute as to the fact that the applicant enter into an agreement with the original owner Raju Mishra. By the said agreement, original owner has

given entire authority to the present applicant to develop the land and convert into the plots. He also authorized him to enter into an agreement with the persons who intending to purchase the plots. Subsequently, that agreement was cancelled on 27.06.2022. Prior to cancellation of the said agreement, the sale deed was executed by the original owner in favour of one Mukesh Anchalwar. Thus, it is apparent that before cancelling the agreement in favour of the present applicant, original owner has executed the sale deed in favour of third person. In between the applicant entered into an agreement with various persons to sale the plots in their favour. Admittedly, as the sale deed was not executed by the original owner in favour of the present applicant, he could not fulfill the promise and could not execute the agreement to sell. As far as the allegation of forgery is concerned, the statement of the original owner is relevant which shows that initially, he has made a complaint that present applicant has made his forged signatures, but during investigation it revealed that the said signature was not made by the present applicant, but it was made by one Ravikant. The statement of said Ravikant is also recorded by the investigation agency, however no investigation is carried out as far as the allegation of the Raju Mishra regarding the forged signature by said Ravikant is concerned. Admittedly, there was money transaction between the said Raju Mishra and applicant. The intending purchaser came forward

and made a complaint that the applicant has obtained the money from him and not executed the sale deed, but considering the fact that as sale deed was not executed in his favour by the original owner, he could not execute the said deed. As far as the consideration amount is concerned, admittedly, the offence under Section 420 is made out against him. But, considering now, the investigation is already completed and charge-sheet is filed and the applicant is behind bar for a considerable period, his further incarceration is not at all required. However, considering the nature of the offence, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

(i) The application is allowed.

(ii) The applicant **Sunil s/o Ramesh Lede** shall be released on bail, on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount, in connection with Crime No.968/2023, registered with Police Station, Kalmeshwar, District Nagpur for the offences punishable under Sections 420, 467, 468, 471 of the Indian Penal Code.

(iii) The applicant shall attend the concerned Police Station once in a week on Monday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency.

(iv) The applicant shall surrender his passport if he is having, before the investigating agency and shall not leave the jurisdiction of

India without prior permission of the District Court, Nagpur.

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(vi) The trial Court shall not be influenced by the observation made by this Court which is only for the purpose of bail.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)