



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

CRIMINAL APPLICATION (ABA) NO.480 OF 2024
(Sachin Vasantrao Gadiwar and anr. Vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.A. Dhawas, Advocate for the applicant.
Mr. M.J. Khan, APP for the State.
Mr. P.D. Sharma, Advocate for intervenor.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 31, 2024.

Heard.

2. By this application, the applicants are seeking pre-arrest bail in connection with Crime No.175/2023 registered with Police Station Bhisli, Tahsil Chimur, District Chandrapur for the offence punishable under Sections 420, 466, 468, 472, 473, 474, 475 and 476 of the Indian Penal Code.

3. As per the accusation against the present applicants, they had entered into an agreement with one Smt. Jaymala Gulhane for purchase of property. However, she did not sell the property as agreed. A Special Civil Suit No.142/2008 was filed for the specific performance of contract. The said Civil Suit was decreed on 22/07/2013. Thereafter, the First Appeal and Second Appeal also decided in favour of the present applicants. The decree was put in the execution proceedings. The Second Appeal was dismissed on 12/09/2017. It is alleged that the

receipt showing that the applicants were present in the Registrar's office for execution of the sale-deed is a forged receipt. On the basis of the said report, police have registered the crime against the present applicants.

4. Learned Counsel for the applicants submitted that as far as the allegations are concerned, the applicants agreed to purchase a property from one Jaymala Gulhane i.e. the mother of the informant. She was the owner of the property who agreed to sell the property but eventually, she has not executed the sale-deed. Hence, the applicants have filed Special Civil Suit No.142/2008 for specific performance of contract which was decided in their favour. Thereafter, the appeals were preferred but the same were also dismissed. Thereafter the informant approached to the Hon'ble Apex Court, but he could not get any relief from the Hon'ble Apex Court. Therefore, the applicants filed the execution proceeding vide Special Darkhast No.50/2014 in which by the order of the Court, the sale-deed has been executed in favour of the applicants by following the due process of law. Now, this complaint is lodged only to deprive the present applicants from getting possession. He submitted that as far as the allegations regarding the forgery of the receipts are concerned, are false and baseless one. He submitted that now that receipts are produced by the present applicant before the Investigating Officer. The Investigating Officer has drawn the panchnama, therefore, the custodial

interrogation of the applicants is not required. In view of that, they be protected by granting anticipatory bail.

5. Learned APP and learned Counsel for the complainant strongly opposed the said application on the ground that during the investigation, the investigating agency has also applied to the Sub-Registrar Office, Chimur on 25/03/2014 and has obtained the photocopies of the other documents having the signature of Mr. Meshram in order to verify the genuineness of the signature. The handwriting expert's opinion is also obtained which substantiates the said contention. They also submitted that seal of the Registrar's office is used in the forgery of the said document, therefore, the custodial interrogation of the present applicants is required and prays for rejection of the application.

6. Learned Counsel for the applicants placed reliance on the ***Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation [2013 AIR (SC) (Cri.) 1286]*** wherein the aspect of bail in economic offence is considered by the Hon'ble Apex Court and held that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Bail should not be granted on ground accused was in a jail for one year. He further placed reliance on the decision of the ***Directorate of Enforcement Vs. M. Gopal Reddy and anr. [2023 All SCR (Crl.) 785]*** wherein the Hon'ble Apex Court

has considered the anticipatory bail in a case of Prevention of Money Laundering Act, 2002. The High Court has to consider the nature of allegations and seriousness of the offence is observed by the Hon'ble Apex Court and the rigour of Section 45 of the Act is also considered by the Hon'ble Apex Court. He further placed reliance on ***Prem Shankar Prasad Vs. State of Bihar and anr. [2021 AIR (SC) 5125]*** wherein it is held that anticipatory bail even in a case of business transaction, accused not entitled for anticipatory bail. In a case of ***Sumitha Pradeep Vs. Arun Kumar C.K. and anr. [2022 AIR (SC) 5705]*** wherein the anticipatory bail in respect of the rape with minor girl was considered and it is observed that the custodial interrogation can be one of the relevant aspects while deciding anticipatory bail. Lastly, he placed reliance on ***Md. Allauddin Khan Vs. The State of Bihar and ors. [2019 AIR (SC) 1910]*** wherein the Hon'ble Apex Court has considered that the High court has no jurisdiction to appreciate evidence while hearing a petition under Section 482 of Cr.PC. because there are contradictions or inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. It is further held that if a civil suit is pending still the criminal proceedings can be initiated.

7. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that there was an agreement between the present applicant and mother of the informant for purchase of the property. The civil litigation were filed which are decided in favour of the present applicants and in view of the decree passed in a Civil Suit No.142/2008 the sale-deed was executed in favour of the present applicants. Now, it is alleged by the informant that the receipt showing that the applicants were present in the Registrar's Office for execution of the sale-deed is a forged receipt. The investigation to that effect is carried out by the Investigating Officer. It is submitted that the physical custody of the applicants is required for the recovery of the said receipt. Now, the said receipt is already produced by the present applicants before the Investigating Officer and the said receipt was seized by the Investigating Officer by drawing the panchnama. Thus, as far as the custodial interrogation and the grounds raised for the custodial interrogation is not in existence as the said receipt is already in possession of the investigating agency. The handwriting expert's opinion is also shows that the receipt is forged one. Thus, only the interrogation part is remained and for that purpose the custodial interrogation of the present applicants is not required. Considering the circumstance under which the alleged crime is registered is to be taken into consideration. Thus, it appears that out of the civil dispute, this crime is registered. At this stage,

considering that the incriminating document is already in possession of the investigating agency and only for the interrogation purpose, the custody of the present applicants is not required. In view of that, the interim protection granted to the present applicants deserves to be confirmed.

8. Hence, the application is allowed. The interim protection granted to the applicants vide order dated 08/07/2024 is hereby confirmed on the same terms and conditions.

9. The applicants shall attend the concerned police station once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. till filing of the charge-sheet and shall cooperate with the investigating agency.

10. Contravention of any of the terms and conditions imposed on the applicants by this Court would lead to cancellation of bail.

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)