2024:BHC-NAG:12543

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

CRIMINAL APPLICATION (ABA) NO.706 OF 2024

(Banwari s/o Girdhargopal Bhutada Vs. State of Maharashtra and anr.)

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

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Mr. P.K. Bezalwar, Advocate for the applicant.
Mr. H.D. Dubey, APP for the State.
Ms S.P. Chavhan, Advocate for the complainant.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- NOVEMBER 14, 2024

Apprehending the arrest at the hands of police in connection with Crime No.443/2024 registered with Police Station Pardi, Nagpur for the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code, 1860, the applicant approached this court for grant of pre-arrest bail.

2. The crime is registered on the basis of a report lodged by Bandu Bhojraj Bangde, on an allegation that from 10/12/2018 to March 2024, by hatching conspiracy, the applicant and other co-accused agreed to purchase the agricultural field of the complainant bearing Khasra No.14/2 and 22/2, admeasuring 6 acres, for consideration of Rs.4,62,00,000/-. As the value of the field owned by the complainant as per the ready reckoner was Rs.5,70,00,000/-, and for the said amount, the sale deed came to be executed between the applicant and others. The applicant has only paid Rs.5,27,31,000/- to the complainant, i.e. Rs.42,69,000/- less. The complainant has not paid the total consideration amount, and it is

further alleged that the applicant, by threatening and by assigning the reasons that there would be raids of the Enforcement Directorate (E.D.) and Income Tax, asked the complainant to transfer the amount in his account, and accordingly the amount of Rs.2,62,00,000/- was transferred in the account of the co-accused.

3. Thus, as per the allegations, the complainant was cheated to the tune of Rs.1,96,69,000/-. On the basis of said report, police have registered the crime against the present applicant.

4. Learned Counsel for the applicant submitted that the applicant and other co-accused entered into an agreement with the complainant, and accordingly, the consideration amount was fixed as Rs.4,62,00,000/-. The recitals of the FIR itself shows that the informant has received the entire consideration amount. He further submitted that, from 15/12/2018 till 27/03/2024, the applicant has paid a total amount of Rs.5, 80,38,000/- by RTGS and cheques to the informant (1) Bandu Bhojraj Bangde, (2) Bandu @ Kushal Sadashiv Gharpende and (3) Chhabai Bai w/o Shyamrao Hatwar, (4) Madhuri Rewatkar, (5) Gunabai Fating, (6) Manorama Karmore and the informant Bandu had received the amount of Rs.4,31,30,000/-, whereas Bandu @ Kushal Sadashiv Gharpende received Rs.55,00,000/-, and Chhabi Bai w/o Shaymrao Hatwar received Rs.55,00,000/-, Madhuri Rewatkar received Rs.4,95,000/-, Gunabai Fating had

received Rs.29,18,000/- and Manorama Karmore received Rs.4,95,000/-, from the applicant. Thus, the applicant was paid Rs.10,38,000/- more than the consideration amount in the Sale. Thereafter, the present applicant entered into an agreement to sell the said land to the Nandkishor Premchand Chakole, and while executing the sale-deed present informant stood as a witness. Thus, the informant is very well aware about the transaction which took place with the said Nandkishor Chakole. He further invited my attention towards the recitals of the FIR and submitted that, as per the FIR, the amount of Rs.20,00,000/- was transferred in the account of Shyam Steel on 03/12/2019 and also on 27/03/2024 to the Sudarshan Associates. However, the statement of the account is silent about the same.

5. He further submitted that as far as the handing over of a cash amount of Rs.60,00,000/- is concerned, there is absolutely no material to show that the said amount was paid to the co-accused or the present applicant. As far as the other entries are concerned, he admits that amount is received by the co-accused, as the excess amount was paid to the informant. Thus, he submitted that considering the entire allegation against the present applicant, at the most, the case against the present applicant and the other co-accused is for the recovery of the amount, but no offence is made out as far as Sections 420 and 406 are concerned. He further submitted that considering the nature of the transactions,

the custodial interrogation of the present applicant is not required and the other co-accused is already released on bail. So the present applicant is standing on the same footing and on the ground of parity also, the applicant shall be released on bail in the event of his arrest.

6. Learned APP and learned Counsel for the complainant strongly opposed the said application and submitted that during the investigation, the Investigating Officer has collected the accounts statement, from which it reveals that the amounts are transferred in the accounts of the present applicant and the co-accused. The present informant was duped by both the accused by obtaining the amount on the pretext of or by showing him that there would be a raid of the Income Tax or Enforcement Directorate and forcing him to transfer the amount in their account. It is submitted that, the amount of Rs.60,00,000/- was also paid by the informant by cash, and thus, the informant has lost the amount in the said transaction. In view of that, the custodial interrogation of the present applicant is required, and therefore, the application deserves to be rejected.

7. After hearing both the sides and on perusal of the investigation papers, it reveals that there was a transaction between the present applicant and the informant as to the purchase of the ancestral property owned by the informant. Accordingly, they entered into an agreement, and the sale-deed was executed. The

consideration amount was fixed, and as per the recitals of the FIR, the informant has received the entire consideration amount i.e. Rs.5,27,31,000/-. As far as the allegations regarding obtaining money by the present applicant on the pretext of raid by the Income Tax or Enforcement Directorate is concerned, except the bare statement of the complainant, there is no other material. It is alleged that the co-accused has obtained a cash amount of Rs.60,00,000/- from the complainant, i.e. also not substantiated by any other evidence. As far as some entries in the accounts are concerned, which are admitted by the co-accused but it is submitted that the said amount is received by the co-accused against the other transaction. As far as present applicant is concerned absolutely there is no material to show that he has received any amount from the complainant after the said transaction. It further reveals that the informant stood as a witness in the subsequent transaction by which the co-accused and the present applicant has executed an agreement to sell in favour of one Nandkishor Chakole. Thus, considering the recitals of the FIR which is not substantiated by any material evidence.

8. Whether the offence under Section 406 and 420 is made out or not, is a matter of evidence. At this stage, it is apparent that there was a transaction which is of a civil nature. It further apparent that as the other legal heirs have filed a civil suit against the informant, and thereafter the informant has filed this complaint.

Considering the nature of the offence, it was obligatory on the part of the Investigating Officer to issue notice under Section 41 assigning the reasons whether arrest of the applicant is required which was not complied.

9. 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. It is observed by the Hon'ble Apex court in the case of ***Satender Kumar Antil Versus Central Bureau Of Investigation & Anr. [2022 Livelaw (Sc) 577]***, wherein it is held that if the officer is satisfied that a person has committed a cognizable offence, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offence, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offence, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer.

10. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons

for arrest in writing. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence.

11. Undisputedly, in the present case, the notice under Section 35(3) of Bharatiya Nyaya Sanhita (BNS) – [Section 41 of Cr.P.C.] is given to the present applicant. However, on perusal of the said notice, nowhere it reveals that the Investigating Officer has recorded the reasons for what purpose the custody of the present applicant is required. Thus, considering that no reasons are assigned by the Investigating Officer, as far as the arrest of the present applicant is concerned, the applicant has made out a case for grant of bail, on the said ground also. After going through the entire investigation papers, it is apparent that the dispute between the present applicant and informant appears to be of a civil nature. However, whether there was an intention since inception or not or whether the act of the applicant was intentional is a matter of evidence. At this stage, the applicant has made out the case for grant of anticipatory bail. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The criminal application is allowed.

(ii) In the event of arrest, the applicant - Banwari s/o Girdhargopal Bhutada in connection with Crime No.443/2024 registered with Police Station Pardi, Nagpur for the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code, 1860, be released on anticipatory bail, on executing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station twice in a week on Monday and Thursday between 10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency.

(iv) The applicant shall not leave the jurisdiction of Nagpur without prior permission of the District Court.

(v) The applicant shall surrender his passport if he is having before the investigating agency.

(vi) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case either personally or by way of electronic media.

(vii) The trial Court shall not be influenced by the observation which are *prima-facie* in nature.

12. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*