



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

CRIMINAL APPLICATION (ABA) NO.746 OF 2024

Alwyn Anthony Lowrence

Vs.

The State of Maharashtra, Through Police Station Officer, Beltarodi
Nagpur, 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. A. H. Daga, Counsel for the applicant.
Ms. H. N. Prabhu, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 13/11/2024

1. The application is filed by the applicant for grant of anticipatory bail in connection with Crime No.478/2024 registered with Police Station Beltarodi, Nagpur, District Nagpur for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Dadarao Bapurao Shrikhande alleging that he entered into an agreement with the present applicant to purchase plot No.08 and present applicant has obtained the consideration amount but subsequently the said plot was sold to one Tushar Girhe. Thus, he was duped by the present applicant. On the basis of the said report, police have registered the crime against him.

3. Learned Counsel for the applicant submitted that as far as the execution of the sale deed in favour of Tushar Girhe is concerned, it is executed by his Power of Attorney Holder and not by him. He invited my attention towards the Power of Attorney as well as sale deed and submitted that the last page of the sale deed itself shows that the sale deed is executed by the Power of Attorney Holder and he was not aware about the same. It is further submitted that moreover, the offence alleged against the present applicant is punishable with seven years imprisonment and there is no compliance by issuing the notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita (BNSS) of 2023 (Section 41 of Code of Criminal Procedure (Cr.P.C.)). In view of the guidelines issued by the Hon'ble Apex Court even for cognizable offence an arrest is not mandatory.

4. He further placed reliance on the decision of the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation**, reported in **(2022) 10 SCC 51**, wherein the Hon'ble Apex Court has held that that even for cognizable offence an arrest is not mandatory as can be seen from the mandate of Section 41 of the Code of Criminal Procedure. 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.

5. Section 41 of the Cr. P.C. guides 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. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons. It is further observed by the Hon'ble Apex Court that the consequence of non-compliance with Section 41 of Cr.P.C. shall certainly inure to the benefit of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to grant of bail.

6. Thus, considering all theses aspects, the applicant prays for grant of anticipatory bail.

7. Learned APP strongly opposed the said application on the ground that the present applicant initially enter into an agreement with one Pratiksha Nilesh Maske to sale the said plot. The said

agreement was cancelled and subsequently, he entered into an agreement with the present informant obtained the consideration amount and sold out the said plot to the third person. As far as the contention of the present applicant is that his Power of Attorney has sold the said plot without his knowledge is falsified, and she invited my attention towards the sale deed wherein the signature of the applicant is appearing and submitted that this fact itself is sufficient to show that the present applicant was very well aware that he has entered into an agreement to sell the said plot to the informant and then also he has executed the said deed intentionally to dupe the informant, thus, *prima facie* case is made out. She submitted that notice under Section 41A of Cr.P.C. is already issued by the Investigating Officer.

8. On perusal of the entire investigation papers and the submissions made by both sides. It reveals that initially, the applicant entered into an agreement to sell the plot to the informant and subsequently, he sold the same to one Tushar Gire. Considering the allegation made against the present applicant and the sale deed which is executed in favour of Tushar Gire. The last page of the sale deed shows that the Power of Attorney has executed the sale deed and not the present applicant. Admittedly, his photograph and the signature is appearing on the said sale deed. Even accepting the allegation as it is, admittedly, the offence alleged against the present applicant is under Section 420 of the Indian Penal

Code for which punishment up to seven years is provided, there is no compliance under Section 41 of Cr.P.C. After passing of the order by protecting the present applicant, at the interim stage, the Investigating Officer has issued the notice under Section 41A of Cr.P.C. The issuance of the notice under Section 41A of Cr.P.C. itself is sufficient to show that the custodial interrogation of the present applicant is not required and therefore, the said notice is issued. In view of that, the applicant has made out a case for grant of anticipatory bail. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest, the applicant **Alwyn Anthony Lawrence** shall be released on anticipatory bail, in connection with Crime No.478/2024 registered with Police Station Beltarodi, Nagpur, District Nagpur for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 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 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.
- (iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case, personally or through the electronic media.

(6)

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9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate