



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

**CRIMINAL APPLICATION (ABA) NO.772 OF 2024**

(Aijaz Khan s/o Noor Khan Vs. 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. S.S. Dhengale, Advocate for the applicant.  
Ms T.H. Udeshi, APP for the State.

**CORAM:- URMILA JOSHI-PHALKE, J.**

**DATED :- NOVEMBER 14, 2024.**

Heard.

2. By this application, the applicant is seeking pre-arrest bail in connection with Crime No.91/2024 registered with Police Station Gittikhadan, Nagpur, District Nagpur for the offences punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

3. The accusation against the present applicant is on the basis of report lodged by Onkar Laxman Gulwade alleging that in the year 1982 Moreshwar Bante, resident of Sitabuldi, Nagpur has entered into the partnership agreement for Mouza Beedipeth, Nagpur to purchase a land and to start the business of selling of the plots and for that purpose the society namely Jai Vignaharta Co-operative Housing Society Limited was formed. The informant is a Chairman and Moreshwar Bante is a Secretary of the said society. From the year 1982 to 1999, the complainant was the Chairman and later on from 1999 to 2013 Shri Bhaskarrao Bhoyar was the President.

After the death of Bhaskarrao Bhoyar again in the year 2013 the complainant became the Chairman of the society. During the year 1985 at Mouza Borgaon, Kh. No.24/1, 25/1 and 51/1 total area admeasuring 13 acres, 4 gunthas was purchased and said land was converted into the residential plot and said plots were declared for sale. At the relevant time, the preparation of layout map of the above mentioned land under the name of Vignaharta Society including 120 feet ring road was shown, running from the North-South. Thus, on the remaining land, the society carved out Plot No.169 admeasuring 13,000 sq. ft., Plot No.170 admeasuring 11,000 sq. ft. and Plot No.171 admeasuring area 5000 sq. ft. In the month of December 1999, three stamp papers of Rs.50/- was purchased from Stamp Vendor and on 06.12.1999 an agreement to sell of property No.169 was executed between the complainant and one Naresh Marotrao Dhawas and Vijay Nanaji Bhoyar. In the said agreement, allotment of plot was also demarketed and the complainant being the Chairman of the society could not sign his own agreement, and therefore, in the said agreement of sale of Property No.169, Shri Marotrao Dhawas signed the said agreement. It is further alleged that on 20.05.2017 a notice was received from Advocate on behalf of the present applicant thereby asking for execution of sale-deed of Plot No.169 and 170. On due inquiry it reveals that the said agreement to sell is a forged document, and therefore, he approached to the police station and lodged the report.

4. Learned Counsel for the applicant submitted that in fact it is the present applicant who has issued the notice for execution of the sale-deed. He submitted that the other co-accused is already released on bail and the present applicant is also standing on the same footing. He invited my attention towards the recitals of the FIR and submitted his name is not mentioned in the FIR, no specific role is attributed to him. As far as the custodial interrogation is concerned which is not required. The nature of the transaction is of a civil nature and no criminal offence is made out. Considering the same, the custodial interrogation of the present applicant is not required, and therefore, he be protected by granting anticipatory bail.

5. Learned APP strongly opposed the said application on the ground that during the course of the investigation the investigating agency has seized the agreement dated 25/07/1999. The statements of the witnesses of the aforesaid agreement are duly recorded and the further investigation is still in progress. She further submitted that the applicant's role revealed from the investigation papers that he is the person who is involved in preparing the said agreement to sell which is forged document. The statement of the witnesses further shows that he is the person who has brought the stamp papers, prepared the agreement to sell by adjusting the said stamp papers to right down the contents of the said agreement. There was interpolation in the said agreement

also. The handwriting expert's opinion is also sought and which also substantiate the case of the prosecution. Thus, she submitted that considering the prime role played by the present applicant, he cannot be equated with the co-accused who is already released on bail. She further invited my attention towards the order passed by the Hon'ble Apex Court by which the co-accused Sushma Ganesh Nandeshwar is released on bail. She submitted that in the said order the merits of the matter is not considered. It is only considered that the signature might be of the husband of the co-accused and by considering that aspect, she was released on bail. Here the complete different role is played by the present applicant. In view of that, the application deserves to be rejected.

6. I have heard learned Counsel for both the parties. Perused the investigation papers. From the recitals of the FIR it reveals that as per the allegation, the complainant namely Onkar Gulwade lodged oral report alleging that in the year 1985 the society had purchased the agricultural land from Shri Dorlikar and layout consisting of 168 plots. Initially, a road was shown in the map but subsequently the same was cancelled and the society demarketed three plots on the area of the road. Said three plots were allotted to its members. The society received a notice dated 20/05/2017 issued by Advocate Bhande mentioning that to execute a sale-deed in respect of plot Nos.169 and 170 in favour of the co-accused. Thereafter on 31.07.2017, the present applicant made an

application before the District Deputy Registrar, Cooperative Societies, Nagpur for execution of the sale-deed in her favour. The informant appeared before the District Deputy Registrar, Cooperative Societies, Nagpur and received photocopy of sale and possession deed in respect of plot Nos.169 & 170. After perusal of the same, it revealed that he was not acquainted with Ganesh Nandeshwar nor he sold any plot to him. However, the signatures of the informant and two witnesses made on the agreement appear to be correct. However, signatures of the informant and two witnesses were visible on the said document. The informant verified the record kept at society's office and realized that the agreement dated 25.07.1999 executed in the name of Kishor Dhawas in respect of plot No.70, Mouza Nari and a sale-deed in respect of Plot No.110 mouza Borgaon are missing. Since 2017, the present applicant and co-accused made complaints against the society. It further revealed that, bogus agreement to sell was prepared. Therefore, enquiry was made and the role of the present applicant was revealed.

7. During investigation, the Investigating Officer has recorded the statements of various witnesses including Vijay Nanaji Bhoyar, Rajkumar Nanaji Bhoyar and others from which it revealed that the present applicant is involved in preparing the said agreement to sell which is a forged document. The statement of one Nakshatrabali Pyarelal Shahu also supports the allegation which shows

that said Aijaj Khan has brought the stamp papers and prepared agreement to sell by adjusting the said stamp papers to write down the contents of the said agreement. The agreement to sell is also on record which shows that the earlier signature was scored and the name of the husband of the co-accused is mentioned in it. The investigation papers further shows that the disputed documents are forwarded to the Hand Writing Expert and he opined that, there was scoring in respect of the name and the signature of the person who signed the said document. As far as the forgery is concerned, the report shows that at page No.4 now reading marked D2 is not the original page number. Thus, it shows that one page number is also attached which was not part of the original document. Initially, the notice was issued by the present applicant for execution of the said sale-deed and thereafter the entire investigation and enquiry was conducted and the role of the present applicant is revealed.

8. It is well settled that mere custodial interrogation is not required is not sufficient to grant the anticipatory bail to the applicant. Recently, the Hon'ble Apex Court in the case of ***Ashok Kumar Vs. State of Union Territory Chandigarh [2024 SCC OnLine SC 274]*** wherein it is held that there is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may

also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than *prima facie* why the custodial interrogation of the accused is required for the purpose of investigation. On perusal of the entire investigation papers it reveals that State has pointed out that there is a *prima facie* material against the present applicant. The present applicant in connivance with the other co-accused is involved in a forgery of the documents. The entire land which belongs to the society and there is an attempt to grab the portion of the land with the assistance of the said forged documents. Considering the *prima facie* material against the present applicant, the custodial interrogation of the present applicant is of-course required. In view of that, no *prima facie* case is made out to release the present applicant on anticipatory bail. In view of that, the application deserves to be rejected.

9. Considering the *prima facie* material against the present applicant, the application deserves to be rejected.

10. Hence, the application is rejected accordingly.

**(URMILA JOSHI-PHALKE, J.)**