



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

CRIMINAL APPLICATION (ABA) NO.738 OF 2024

Mirza Zakaulla Baig Mirza Wajir Baig
Vs.

State of Maharashtra, Through the Khadan Police Station, Akola

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

Court's or Judge's orders

Mr. S. H. Mansoori, Counsel for the applicant.
Ms. Trupti Udeshi, APP for non-applicant /State.
Mr. Nishant Patil, Counsel for assist to prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19/11/2024

Criminal Application (APPP) No.2062/2024

1. By this application, the original complainant is seeking permission to engage the Counsel to assist the prosecution. In view of the reasons mentioned in the application, the permission is granted to engage the Counsel to assist the prosecution.

2. The Criminal Application (APPP) No.2062/2024 is disposed of.

CRIMINAL APPLICATION (ABA) NO.738 OF 2024

1. Apprehending the arrest at the hands of police in connection with Crime No.644/2024 registered with Khadan Police Station, Akola for the

offences punishable under Sections 420, 468, 471 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 Hiranman Laxman Ambhore, on an allegation that the present applicant is the President of Rajnand Gruhanirman Sahakari Sanstha Limited Malkapur. The complainant was in need of residential plot, and therefore, he entered into an agreement with the present applicant to purchase the said plot. The present applicant has executed the said sale deed, but subsequently he came to know that the said plot is already sold to somebody else. Thus, he was duped by the present applicant.

3. Learned Counsel for the applicant submitted that, as far as the allegations are concerned, the dispute was pending before the revenue authority, and the present applicant has challenged some mutation entries. The said appeal was allowed by the Sub-Divisional Officer. Being aggrieved the same, the complainant has preferred an appeal, which was dismissed. Thus, he submitted that as far as the dispute between the complainant and the present applicant is concerned, which is of a civil nature, The entire investigation revolves around the documentary evidence. The documents are already with the investigating agency. The custodial interrogation of the present applicant is not required.

In view of that, he be protected by granting anticipatory bail.

4. Per contra, learned APP strongly opposed the said application on the ground that with intent to dupe the informant, the sale deed was executed by the present applicant in favour of the third person. In view of that, his custodial interrogation is required.

5. Learned Counsel for the complainant filed his written submissions as well as orally submitted that the informant is a member and elected Director of the Society and is the owner of the Lay Plot No.10 allotted by the Society. He is in settled possession of Plot No.10. The allotment letter was also issued in his favour, but by taking the disadvantage of being President of the said Society, the present applicant has executed the sale deed in favour of the third person and with intent to dupe the present informant. Thus, there was an intention since inception and therefore, the *prima facie* case is made out against the present applicant. In view of that, the application for grant of anticipatory bail deserves to be rejected.

6. After hearing both sides and on perusal of the investigation papers, it reveals that the applicant is the President of the said Society. The entire dispute revolves around Plot No.10 of the said Society. It reveals from the investigation papers that

said Plot was initially allotted to the informant subsequently, it was sold to the third person. The inquiry report is also on record which shows that the dispute between the present applicant and the informant is of a civil nature. Moreover, the present applicant has already cooperated with the investigating agency and attended the Police Station, and handed over the relevant documents to the investigating agency. It is well settled that merely because the prosecution agency is saying that custodial interrogation is required is not sufficient, but the prosecution has to substantiate the said contention by making the grounds that for what purpose the custodial interrogation of the present applicant is required. 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** is also taken into consideration wherein it is specifically held by the Hon'ble Apex Court that in every cognizable offence the arrest of the accused is not mandatory. The investigating Officer has to record the reasons why the arrest of the accused is required by issuing the notice under Section 41 of the Code of Criminal Procedure (35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)). It is apparent that no such compliance is made by the Investigating Officer. Thus, for all above these grounds, the applicant has made out a case for grant of anticipatory bail. In

view of that, the application deserves to be allowed.

Accordingly, I proceed to pass following order:

ORDER

a] The application is allowed.

b] In the event of the arrest, in connection with Crime No.644/2024 registered with Khadan Police Station, Akola for the offences punishable under Sections 420, 468, 471 of the Indian Penal Code, 1860, the applicant – **Mirza Zakaulla Baig Mirza Wajir Baig** shall be released on anticipatory bail, on executing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.

c] The applicant shall attend the concerned Police Station once in a week on Monday between 10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency, till filing of the charge-sheet.

d] The applicant shall produce the relevant documents before the Investigating Officer if not produced by him.

e] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)