



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

CRIMINAL APPLICATION (ABA) NO. 755/2023

Harshal s/o Babsaheb Pande and another V/s 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. K.J. Topale, counsel for the applicants.

Mrs. Sneha Dhote, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 05/02/2024.

1. Apprehending arrest at the hands of police in connection with Crime No. 540/2023 registered with Police Station Khamgaon City, Buldhana for the offences punishable under Sections 156(3) of the Code of Criminal Procedure and Sections 420, 417, 465, 467, 471 and read with Section 34 of the Indian Penal Code, 1860. On the basis of the order passed by the Joint Judicial Magistrate First Class, Khamgaon Buldhana in the application under Section 156(3) of the Code of Criminal Procedure, 1973, the applicants have approached this Court for grant of pre-arrest bail.

2. The accusation against the present applicants is on the basis of report lodged by the complainant on an allegation that the present applicants converted the land into non-agricultural land, and the said land was divided into plots. The complainant entered into an agreement with the applicants and paid the consideration amount. As the layout was not finally sanctioned, the plot was sold out to

the complainant, and the amount paid by the complainant as an earnest amount is also not repaid.

3. Learned counsel for the applicants submitted that apparently after taking into consideration, the allegations as it is, the offence is not made out of cheating after the applicants are released on ad-interim anticipatory bail, he has cooperated with the investigating agency and his custodial interrogation is not required.

4. On the other hand, learned APP strongly opposed the application on the ground that during the investigation, the investigating officer has called the present applicants and he has given his written submission but he has not cooperated with the investigating agency, his custodial interrogation is required. She further submitted that it is not a mere breach of an agreement but there was intention since inception and therefore, the applicants entered into an agreement and obtained the consideration amount and not executed the sale-deed in favour of the complainant.

5. Having heard learned counsel appearing for the parties and after going through the investigation papers, it reveals prima-facie that it is out of the agreement which was executed by the present applicant in favour of the complainant and which was not fulfilled. The prima-facie, the nature of the transaction appears to be a civil nature, considering the same, custodial interrogation is not required. Moreover, the entire material is in the nature of the documentary evidence. In view of that, ad-interim protection granted to the present applicants deserves to be

confirmed. Accordingly, I proceed to pass the following order:

- a) The criminal application is allowed.
- b) In the event of arrest, in connection with Crime No. 540/2023, registered with Police Station Khamgaon City, Buldhana for the offences punishable under Sections 156(3) of the Code of Criminal Procedure and Sections 420, 417, 465, 467, 471 and read with Section 34 of the Indian Penal Code, 1860, the applicants the applicants – **Harshal s/o Babasaheb Pande and Apurva w/o Harshal Pande**, be released on ad-interim anticipatory bail on executing P.R.Bond of Rs. 20,000/- each with one solvent surety in the like amount.
- c) The applicants shall attend the concerned Police Station as and when required for investigation purpose.
- d) The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]