

Madhusudan Mishra Vs State of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: June 27, 2018

Acts Referred: Indian Penal Code, 1860 " Section 120B, 420
Code Of Criminal Procedure, 1973 " Section 439

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Rakesh Pandey, Shashank Thakur, Manay Nath Thakur

Final Decision: Allowed

Judgement

P. Sam Koshy, J

1. The applicant has preferred this bail application under Section 439 of Cr.P.C. in connection with Crime No.86/2018 registered at Police Station Gol

Bazar, Raipur (C.G.) for the offence punishable under Sections 420 & 120-B of IPC.

2. Present applicant is in jail since 01/04/2018.

3. The allegation against the present applicant as per the prosecution case is that, the present applicant is said to have got a land which is in the name

of Yusuf Sharif and his brothers and sisters by way of a sale deed executed on 16/04/2014.

4. The case of the prosecution is that, the present applicant is said to have got a power of attorney executed in the name of the brother of complainant

i.e. - Yusuf Sharif. It is said that the present applicant is said to have influenced Yusuf Sharif for getting the power of attorney executed and then got

executed a sale deed in favour of the present applicant in respect of the property owned by Yusuf Sharif and his brothers and sisters without the

consent and knowledge of the brothers and sisters of Yusuf Sharif.

5. The counsel for the applicant at the outset submits that, it is a case where the power of attorney was executed and registered wayback on

06/07/1996 which still holds good. That the said power of attorney had been executed by the complainant and brothers and sisters of Yusuf Sharif

empowering the attorney holder to take care of the property in their name and also for executing a sale deed if the sale materializes.

6. According to the counsel for the applicant, on the basis of said power of attorney of 1996, the sale deed was executed on 16/04/2014 in favour of

the present applicant. It is now that the family members of the seller i.e. Yusuf Sharif have filed an objection against the present applicant of having

fraudulently purchase the property and have got an F.I.R. registered against him and he has been arrested on 01/04/2018.

7. He further submits that it is a pure case of civil dispute between the parties and a civil suit for cancellation of sale deed is already pending since

2015 between parties. So also an earlier complaint which was lodged by the family members was investigated by the police and the police did not find

any offence made out and had closed the case vide its order dated 07/07/2015, yet now subsequently on a complaint being made by the objector, an

F.I.R. has been registered against the present applicant and thus prayed for releasing the applicant on bail. He further submits that the brother of the

complainant has not been made an accused in the case though it was he who had sold the land to applicant.

8. The counsel for the respondent and the objector however opposing the bail application submits that, the power of attorney has been revoked in the

year 2012 itself and that they have not been taken into confidence while the power of attorney was executed and that they have been fraudulently

delineated from the property which stood in their name by Yusuf Sharif - their brother with the aid of the power of attorney which was executed.

9. On a query being put to the counsel for the parties, they fairly submits that, the power of attorney has never been got revoked or cancelled from the

office of Registrar where power of attorney originally was registered.

10. Thus, without the proper cancellation of power of attorney, the same still holds good and if by virtue of the said power of attorney, if the abovesaid

property has been sold by the attorney holder to the present applicant, it can not be said to be a fraudulent transaction at least prima-facie, it could not

be said so.

11. Moreover, so far as the cancellation of sale deed is concerned, admittedly, a civil suit has already been filed which is still pending.

12. Given the aforesaid facts and circumstances of the case, particularly, taking note of the nature of dispute which primarily appears to be a pure civil

dispute and the fact that the registered power of attorney which is in the name of Yusuf Sharif still not cancelled, the transaction made by Yusuf

Sharif cannot be said to be fraudulent.

13. Accordingly, this Court is of the opinion that, prima-facie, a strong case has been made out for grant of bail to the present applicant.

14. Accordingly, the application for grant of bail is allowed. It is ordered that the applicant shall be released on bail on his executing a personal bond

for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Trial Court. The applicant shall thereafter appear before

the Trial Court on each and every date given by the said court.