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**THE HIGH COURT OF MADHYA PRADESH**  
**MCRC No. 64007/2021**  
(SMT. POONAM BHADORIYA AND ANOTHER Vs STATE OF MADHYA  
PRADESH)

**Through Video Conferencing**

**Gwalior, Dated : 17/01/2022**

Shri Ranjit Khanvilkar, Counsel for applicants.

Shri A.P.S. Tomar, Counsel for State.

Case diary is available.

This first application under Section 438 of CrPC has been filed for grant of anticipatory bail.

The applicants apprehend their arrest in connection with Crime No.499/2021 registered at Police Station – Madhoganj, District Gwalior for offence punishable under Sections 420, 120-B of IPC.

According to the prosecution case, a **notarized agreement to sell** was executed by the mother of applicant No.1 in favour of the complainant, for a consideration of Rs.9,40,000/-, in respect of the property which was left by the father of applicant No.1 and the applicants had stood as Consentor. Thereafter, it is alleged that another **notarized agreement to sell** was executed by the mother of applicant No.1 in favour of her another daughter Sonam without any consideration amount, and thus, it was alleged that the complainant has been cheated by the applicants and the other co-accused persons and they have embezzled an amount of Rs.9,40,000/-.

In the impugned order, it was mentioned that the allegations are that **notarized sale deeds** were executed.

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Accordingly, Shri Tomar was asked to point out the nature of document. However, Shri Tomar again and again submitted that a notarized document was executed. When Shri Tomar was asked to point out as to whether the document in question was **Notarized Sale Deed or Agreement to Sell**, then it was submitted by Shri Tomar that **Notarized Agreement to Sell was executed.**

Therefore, Shri Tomar was directed to read out the cause title of the document, then he read out the title of the document as Written Sale Deed (लिखतम विक्रय पत्र).

Since the Court proceedings are going on through video conferencing, therefore, this Court has no option but to rely upon the submissions made by the State Counsels because the case diary in its physical form is available with the Government Advocates only and the Court has no opportunity to go through the case diary while considering the bail applications.

Under these circumstances, the duty heavily lies on the Public Prosecutor to read out the correct allegations. It is really sorry to say that Shri A.P.S. Tomar, has miserably failed to do so.

It was really shocking that either Shri Tomar was not in a position to understand the title of the document or he was deliberately suppressing that. In both the circumstances, he has failed to discharge his duty.

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From the facts of the case, it is clear that although the document was titled as **sale deed** but Shri Tomar as well as Shri Khanvilkar were misleading the Court by submitting that a **notarized agreement to sell** was executed by mother of applicant No.1 in favour of complainant. There is a vast difference between an agreement to sale and a sale deed. A sale deed in respect of property worth more than Rs.100 is necessarily required to be registered. The applicants have admittedly stood as consentors to the sale deed executed by the mother of applicant No.1 in favour of complainant and instead of getting it registered, the sale deed was got notarized.

Thus, it is a clear case of evasion of stamp duty also. It is true that the stamp duty is payable by the purchaser but the question is as to whether the mother of applicant No.1 had executed the sale deed in favour of the complainant after accepting an amount of Rs. 9,40,000/- or not?

It is the case of prosecution that thereafter the mother of applicant no.1 executed a notarized sale deed in favour of her daughter Sonam, without any consideration amount.

Why mother of applicant No.1 executed a notarized sale deed in favour of her daughter Sonam?

It is submitted by Counsel for applicant that in fact a loan document was to be executed but by playing fraud on the applicants

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and mother of applicant No.1, the notarized sale deed was got executed.

If the submission made by Counsel for applicant is considered then, it is clear that the said submission has no basis because if the applicants and the co-accused were of the opinion that a document pertaining to loan transaction was to be executed, then there was no reason for the mother of applicant No.1 to execute a notarized sale deed in favour of her own daughter Sonam without any consideration amount.

Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that it is not a fit case for grant of bail.

At this stage, Shri A.P.S. Tomar, tendered his unconditional apology for not assisting the Court properly. He submitted that he had misunderstood the queries of the Court.

Be that whatever it may be.

Under the hope and belief, that Shri Tomar would understand the duties attached to the office of Advocate General, the apology tendered by him is accepted.

The application fails and is hereby **dismissed**.

**(G.S. Ahluwalia)**  
**Judge**

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