

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 539 OF 2015

Sk. Rafiq s/o Sk. Chand Tamboli

.... APPLICANT

V E R S U S

The State of Maharashtra & Ors.

.... RESPONDENTS

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Mr. M.B.Sandanshiv, Advocate for Applicant.

Mr. M.M.Nerlikar, A.P.P. for Respondent – State.

Mr. M.S.Karad h/f Mr.S.S.Thombre,

Advocate for R -2 to 4.

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CORAM : V.M.DESHPANDE, J.

DATE : 1st APRIL, 2015

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PER COURT :

1. Heard Mr. M.B.Sandanshiv, learned counsel for the Applicant, Mr. M.M.Nerlikar, learned A.P.P. for Respondent – State and Mr. M.S.Karad holding for Mr.S.S.Thombre, learned counsel for Respondent Nos. 2 to 4.

2. The challenge in the present application u/s 439 (2) of the Code of Criminal Procedure is to the order passed by the learned Extra Joint Additional Sessions Judge, Parbhani dated 01/01/2015 in Criminal Misc. [Bail] Application No. 1017/2014, by which the learned Judge granted anticipatory bail in favour of respondent Nos. 2 to 4 for the offences punishable u/s 420, 467, 468, 471 read with 34 of the Indian Penal Code.

3. According to the applicant, present respondent Nos. 2 to 4 have forged sale deed dated 30/11/2013, whereby it is shown that one Afsarkhan Mansurkhan Pathan has executed sale deed in favour of respondent No. 2 Banubee. According to the applicant, in fact Afsarkhan Mansurkhan Pathan has already executed sale deed in respect of said property on 07/08/2013 and, therefore, the present respondents have committed serious offence.

4. In so far as respondent Nos. 4 and 5 are concerned, they are the witnesses on the disputed sale deed dated 30/11/2013 and in so far as respondent No. 3 is concerned, he is only the husband of the beneficiary of the disputed document.

5. When the application for anticipatory bail was filed by the respondents, learned Judge of the Court below was having advantage of perusing the investigation papers. The learned Judge has observed in the impugned order that there are inconsistent statements of the witnesses in respect of

the disputed documents.

6. Further, the learned Judge of the court below, in my view, has correctly reached to the conclusion that the custody of respondent Nos. 2 to 4 was not at all necessary since the offence was pertaining to the documents.

7. The State has not filed any application for cancellation of bail. It is the first informant who has approached to this Court. The discretion is used by the learned court below on the given set of facts. No fault can be found with it. Further, the Investigating Officer is not claiming the custodial presence of non applicants in view of not challenging the order impugned.

8. In that view of the matter, present application is required to be rejected and accordingly it is rejected.

[V.M.DESHPANDE, J.]