

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 79 OF 2015

Mr. Ashok Mundergi, Sr. Advocate a/w. Mr. Nilesh Tribhuvan and Ms. Swapana Kode, advocate for Applicants.

Ms. P.P. Shinde, APP for State.

Mr. A. Tripathy, advocate for intervenor.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 28, 2015

P.C.:

1 Heard the learned Counsel for the applicants and the Learned
APP for State. Perused the papers.

2 This is an application under section 438 of the Code of Criminal
Procedure, 1973. The applicants herein are apprehending their arrest

in Crime No. 366 o 2014 registered at Worli Police Station on 29/9/2014 for offence punishable under Section 420, 465, 467, 468, 469, 471 read with Section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 29/9/2014 one Khumandas K. Adia lodged a report at the police station alleging therein that he happens to be the trustee of Shrimad Goswami Shri Purushottamlalji Vageshlalji Maharaj Trust established in 1948 under the Bombay Public Trust Act. According to the complainant, the founder of the said trust was one Shri Purushottam Lalji Wagesh Lalji Maharaj who died in the year 1968. After his demise, his son Shri Brajjiivanlalji Maharaj was the trustee and was looking after the trust property alongwith other trustees. One of the trustee is his father Krushnadas Mathuradas Adia who expired on 15/1/2013. According to the complainant, the founder of the said trust i.e. Shri Purushottam had purchased certain properties bearing Survey No. 30/6 and allied properties at village Mauje Kole admeasuring approximately 50 acres and 22/4 gunthas. That according to the complainant, the said

property was gifted to the trust by the founder of the said trust. The said property found place in Schedule I before the Charity Commissioner. It is alleged that the present applicants have claimed to have purchased the said property by an agreement of sale dated 9th May, 1996 and the final sale deed which was executed in 1997. It is alleged that the present applicants, on the basis of sham and bogus documents are claiming ownership of the said properties. That the applicants have fabricated documents to show that Kamalpriya a wife of Puroshottam had allegedly sold the properties to the present applicants. It is alleged that the said sale deed is sham and bogus and that the applicants have committed forgery of the revenue records and have claimed ownership and possession. It is also alleged that the applicants have committed the said act in connivance with the revenue officers.

4 It appears from the record that in the year 2013 i.e. on 20/8/2013 Shri Suresh Narayan Pawar who was working as sub-registrar at Kalyan had lodged a report at the police station that one

Lalchand Shivram Bhoir had filed a complaint on 4th May, 2013 claiming that there is forgery and fabrication of revenue records by the present applicants. Upon verification of the said complaint, revenue authorities had taken inspection of the records and found that index of the sale-deed was not found and hence, he had arrived at a conclusion that there has been fabrication of documents in respect of the said property.

5 The applicants had filed an application seeking pre-arrest bail. This Hon'ble Court vide order dated 14th July, 2014 had granted pre-arrest bail in favour of the present applicants. It was specifically observed that upon perusal of the statement of the daughter of Kamalpriya Goswami i.e. vendor of the said properties, an amount of Rs. 28 Lakhs was paid to Mrs. Kamalpriya Goswami and that she had no grievance. She had not filed any complaint against the present applicants. It was further observed that the police had not recorded statement of the so-called RTI activists Lalchand Shivram Bhoir at whose instance, the sub-registrar had taken inspection of the records.

This Court has specifically observed that it happens to be a civil transaction.

6 Learned Counsel for the intervenor submits that while claiming the protection in ABA No. 444 of 2014 the applicants had not disclosed to the Court that the trust is also claiming the ownership of the said property. As against this, the learned Senior Counsel submits that at that stage, it was not necessary to state about the civil dispute as prima facie the sub-registrar had made allegations against the present applicants as they were the vendees of the said property.

7 The daughter of Kamalpriya i.e. Radhabetiji has filed a civil suit which is pending before the Civil Judge, Senior Division at Kalyan and is registered as Sp. Civil Suit No. 1192 of 2014. It is alleged by the plaintiff against the present applicants that her mother had not sold the said property to the defendants i.e. the present applicants and that the Plaintiff and her mother were not even acquainted with the defendants. However, in paragraph-5 it is stated that she is in

possession of the suit property. She has agreed that there were merely negotiations with Mansukhlal Velji who offered to buy the suit property and gave about Rs. 28 Lakhs as deposit for negotiating further terms and final price of the suit property but never got executed any documents or agreement or sale deed. It would show that she had accepted the amount of Rs. 28 Lakhs towards consideration. It is further pertinent to note that the trust had made an attempt to get the said property mutated in the name of the trust. The proceedings were initiated. However, final mutation entry shows that the property is mutated in the name of Kamalpriya Purushottam Goswami as the owner of the said property.

8 Learned Senior Counsel submits that in fact, Purushottamlalji had purchased the said property in his personal capacity and therefore, there was no question of showing the said property in Schedule -I in the proceedings before the Assistant Charity Commissioner. It prima facie appears that the trust is claiming the

said property through a gift deed allegedly executed by the original owner.

9 The learned Counsel appearing for the intervenor submits that the property belongs to the trust and neither the daughter of Kamalpriya or the present applicants can claim any title, right or possession in respect of the said property. The learned Counsel for the intervenor rests his contention on the basis of certain documents.

10 In the complaint lodged by the Sub-Registrar at Manpada Police Station, the police had recorded the statement of Rupal Telang who happens to be the grand-daughter of Kamalpriya. Upon perusal of statement dated 30th April, 2014, it appears that her mother and grand-mother had decided to sell the property in favour of the present applicants for an amount of Rs. 55 Lakhs and she had received Rs. 28 Lakhs in 1995-1996. The said amount was deposited in Allahabad Bank, Sion branch. However, at the same time, she states that no document was executed between the parties and that her grand-

mother had died on 14/6/2000. She has alleged that the power of attorney executed in favour of the present applicants is sham and bogus.

11 It is pertinent to note that in the present case the daughter of Kamalpriya has filed a probate proceedings in this court which is registered as Petition No. 598 of 2000. She has been endowed with the letter of administration over the said property.

12 In the present proceedings, the police officer had recorded the statement of Mrs. Radha Telang on 14/1/2015. She has specifically stated before the police that the said property was purchased by her father in his personal capacity. She has further stated that her father expired on 11/6/1968. She alongwith her mother Kamalpriya and her step-brother were the legal heirs of the said property as per the sale deed of her father. According to her, one of the trustee Vrijjivanlalji Maharaj has inserted his name in the changed report No. 3141/77 dated 2/8/1977 and has filed the same before the Assistant

Charity Commissioner. She has stated that the power of attorney was misused by Krushnadas Adia and he inserted his name in the change report without any resolution. He had also filed a false and fabricated consent letter. That in the changed report dated 30/6/2007 bearing No. 2660/2007 Krushnadas Adia had inserted name of his sons and grand-sons. She has specifically alleged that as per the will deed of her mother, she had sought a probate from the High Court and had filed an application before the Tahasildar, Kalyan for mutating the property in her name. At that time, she had learnt that Krushnadas Adia had lodged a report against Mansukh Senghani and others bearing Case No. 366 of 2014. She has specifically stated that Shri Sumandas Adia and others attempted to sell the property in 2009 to Siddhivinayak Agro and had also sought permission from the Charity Commissioner. However, the said attempt had failed. It is also alleged that Shri Khumandas Adia is illegally attempting to take possession of the said property and that by filing the report at Worli Police Station is attempting to substantiate the change report. She has specifically contended that Krushnadas Adia has illegally

proclaimed himself as the trustee of the said property. She intends to file complaint against Shri Adia.

13 Upon perusal of all the relevant documents, it prima facie appears that the dispute over the said property is civil in nature. The learned Senior Counsel has submitted that after he had intended to purchase the property, he had taken search report to verify the title and ownership of the said property and was confirmed that the said property is the personal property of Shri Purushottamlalji Maharaj and that the vendor i.e. Kamalpriya was the sole legal heir of Shri Purushottamlalji Maharaj. It is true that as on today the name of the present applicants is not mutated in the records of rights. However, in similar complaint which was lodged in 2013 by the Sub-Registrar, the applicants have been granted pre-arrest bail. The allegations in the previous complaint against the present applicants are para materia the same. As on today Learned Senior Counsel has no instruction as to whether any order has been passed below Exh. 5 in the R.C.S. It prima facie appears that the proceedings are also

pending before the Charity Commissioner and the enquiry is in progress. As on today, it prima facie appears that the trust, the legal heirs by virtue of being owners of the ancestral property through will deed and the present applicants by virtue of the sale deed executed in 1997 are claiming title and ownership over the suit property. The enquiry is in progress in the proceedings and therefore, it prima facie cannot be said that custodial interrogation would be imperative.

14 Learned Senior Counsel upon instructions submits that the applicants are willing to cooperate with the investigating agency to the best of their capacity.

15 In view of this, the applicants deserve pre-arrest bail.

16 The observations hereinabove are prima facie in nature and shall not be considered for the purpose of deciding an application for quashing of FIR or discharge application or in any other proceedings,

as it only pertains to the relief claimed under Section 438 of the Code of Criminal Procedure, 1973.

17 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) In the event of arrest in C.R. No. 366 of 2014, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- each and one or two solvent sureties in the like amount.

(iii) The applicants shall report to the concerned police station with all the relevant documents on four consecutive Sundays commencing from 8th February, 2015 between 10 a.m. to 12 noon.

18 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)