

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1450 OF 2015

Santosh Narayan Nandgaonkar & Ors. ... Applicants
Vs.
The State of Maharashtra ... Respondent

**ALONGWITH
CRIMINAL APPLICATION NO.843 OF 2015**

Shri Vaman Keshav Chuneekar ... Intervener
Vs.
Santosh Narayan Nandgaonkar & Anr. ... Applicants
Vs.
The State of Maharashtra ... Respondent

Mr. Mahesh Vaswani, Adv. i/b. Dharini N Nagda for
applicants om ABA No.1450 of 2015.

Mr. Sanjeev Kadam, Adv. i/b. Sachin Hande, Adv. for
applicant in APPP No.843 of 2015.

Mr. S S Pednekar, APP for State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 3rd DECEMBER, 2015.

P. C. :

This is an application for anticipatory bail filed by the
aforesaid applicants apprehending their arrest in Crime No.71 of 2015
registered at Revdanda Police Station, Raigad, under the offences
punishable under Sections 406, 420, 465, 468, 471 read with 34 of the
IPC.

2. Mr. Vaswani, the learned counsel for the applicants has submitted that the father of the accused No.1 had donated land to Borli Koli 'Samaj'. The first informant was the president of the said 'Samaj' from 2000 to 2003 and the applicant No.1 is the president from the year 2004 till date. The applicant Nos.2 to 7 are stated to be the members / committee members. The learned counsel for the applicant has stated that in the year 2005 some land of the said 'Samaj' was encroached upon. The encroachers were evicted and Rs.50,000/- had been collected from them and deposited in the account of the Samaj on 13th February, 2005. He has further stated that vide resolution dated 7th August, 2010, the committee members had decided to auction a portion of the said land. In accordance with the said resolution a portion of the land was auctioned in favour of the Sujata Patil for consideration of Rs.5 lacs. Sale deed to that effect came to be executed on 13th October, 2010. An amount of Rs.5 lacs paid by Sujata was transferred by cheque in the account of Narayan Havaladar, who was the president of Sai Temple Trust. He has submitted that the statement of the bank account which has been placed on record prima facie reveals that the amount has been transferred from the account of applicant No.1 to the account of said Havaladar. Mr. Vaswani, the learned counsel has submitted that the said amount has been utilised for construction

of a temple. The learned counsel for the applicants further submits that though it is alleged that the value of the land is around Rs.65 lacs, the actual value of the land is as per ready reckoner is Rs.1,62,000/-. He has further submitted that there is no merit in the contention that the value of the land is Rs.65 lacs. He has submitted that the allegations levelled against the applicants do not prima facie constitute offence as alleged and even otherwise the nature of allegations do not warrant custodial interrogation.

3. Mr. Pednekar, the learned APP has submitted that the resolution dated 7th August, 2010 itself is a fabricated document. Some signatories to the said resolution are not even the members of the 'Samaj'. It is further submitted that the statements of some of the persons who have stated to be the signatories to the said resolution have been recorded and their statement prima facie reveal that their signatures had been taken on a blank paper. It is further submitted that the 'Samaj' has its own account with Raigad District Central Co-Operative Bank at Alibag. Despite which the applicant No.1 has deposited the amount in the personal account of said Havaladar. The learned APP has submitted that there is sufficient material on record to show the involvement of the accused in commission of the said crime.

4. The learned counsel for the intervener / complainant has submitted that the land is situated close to the sea and a tourist destination. The value of the land is stated to be Rs.65 lacs. He has further stated that the averments made by the applicants in the application show that the amount of Rs.60,000/- collected from the encroachers was deposited in the saving account bearing S B A/c. No.5584, which is a joint account of 'Samaj'. He has submitted that the applicants had reason to deposit the amount received from said auction purchaser Sujata Patil in the personal account of Havaladar. The learned counsel for the intervener submitted that the case which is set up before this Court is entirely different from the defence set up before the Sessions Court in Criminal Case No.942 of 2015. It is submitted that the applicant No.1 is involved in selling the 'Samaj' land and misappropriating the funds derived from the sale of the land.

5. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant, the intervener as well as the learned APP for the Respondent -State. At the outset it may be mentioned here that in terms of the provisions of section 438 of the Criminal Procedure Code, the following factors are to be taken into consideration while deciding the application for anticipatory bail :

- (i) The nature and gravity of the accusation;
- (ii) The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested.

6. In the case of *Siddharam Satlingappa Mehetre vs. State of Maharashtra & Ors.* 2011 (1) SCC 694 the Apex Court, relying upon the Constitution Bench Judgment in *Gurbaksh Singh Sibbia and Ors. v. State of Punjab* (1980) 2 SCC 565 has held as under :

- “i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. The possibility of the applicant to flee from justice;*
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. Impact of grant of anticipatory bail particularly in*

cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of [sections 34](#) and [149](#) of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

7. In ***Jaiprakash Singh V/s. State of Bihar and Anr., 2012 SCC(4) 379***, the Hon'ble Apex Court after referring to the guidelines laid down by the Hon'ble Apex Court in *Sidhram Mehetre (supra)* has held that there is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor

regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail. The Hon'ble Apex Court has further held that parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons thereof. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty.

8. The case at hand is to be considered in the light of the aforesaid settled principles. In the instant case, the records prima facie reveal that Borli Koli 'Samaj' is in possession of an immovable property bearing Gut No.10 admeasuring 0-H, 13-7 R situated at Borli, Taluka-Murud, District-Raigad. The said property is situated close to the sea and in a close vicinity of a tourist destination. The said property was donated to the "Samaj" for the welfare and benefit of the fishermen community.

9. The complainant, who is the ex-president of the said "Samaj" had lodged the FIR alleging that the Applicants herein had sold a part of the said property for consideration of Rs.5 lakhs on the basis of a forged and fabricated resolution dated 7th August, 2010 and that he had misappropriated the sale proceeds. The said resolution, which was allegedly signed by 10 committee members, states that the members of the said "Samaj" had agreed to sell a portion of the property and construct a temple from the sale proceeds. The said resolution allegedly authorises the Applicant No.1 herein to complete the entire sale transaction in respect of the said land.

10. The investigating agency has recorded the statements of some of the signatories to the said resolution. A perusal of the statements of some of these witnesses prima facie reveal that their signatures were obtained on a blank letterhead of said 'Samaj' while some of the signatories have disputed having signed the said resolution dated 7th August, 2010. Furthermore, some of the signatories viz. Rupesh Varsolkar, Narayan Havaladar, Kailesh Kotkar and Rushikesh Shivaji were not the members of the Committee.

11. It is also pertinent to note that there is no prima facie

material to show that the meeting was called on 7th August, 2010 for discussing the proposal of sale of land or the modalities of the sale. There are no records to indicate that the committee members and the other members of the 'Samaj' had attended any such meeting and had agreed to sell the property of 'Samaj' and that they had authorised the Applicant No.1 to transact the said sale proceed. The material on record thus prima facie indicates that the said resolution is forged and fabricated.

12. The records reveal that acting on the forged resolution portion of the property of the 'Samaj' was allegedly sold to one Sujata Patil for Rs.5,00,000/-, who is stated to be the highest bidder in the auction. The records prima facie indicate that the auction was neither advertised nor any public notice of such auction was given. It is also to be noted that in the application for anticipatory bail filed before the Sessions Court, the Applicant No.1 had contended that the said land was purchased in the auction by one Pawan Bhoir for Rs.15,00,000/- and that he had sold the said land to Sujata Patil through the Applicant No.1. The sale deed placed on record does not indicate that the land in question was purchased in auction by Pawan Bhoir. The said sale deed also does not reveal that said Sujata had purchased the said land in

auction. On the contrary, said sale deed dated 13th October, 2010 indicates that the Applicant No.1 had sold the said land to Sujata Patil in the capacity of the president of Koli 'Samaj', Borli. This fact also raises a doubt about the land being sold in public auction and Sujata being the highest bidder.

13. The records reveal that said Sujata Patil had issued two cheques for Rs.3,50,000/- and Rs.1,50,000/- in the name of the Applicant No.1. The records further reveal that the amount of Rs.5,00,000/- which was paid by said Sujata Patil was not deposited in the account of the 'Samaj' but was deposited in the personal account of Narayan Hawaldar. The contention of the learned counsel for the Applicant that there is no saving account in the name of 'Samaj' cannot be accepted as the averments made in the application prima facie reveal that an amount of Rs.60,000/-, which was earlier recovered from the encroachers was deposited in the saving bank account No.SB 5584 (joint account of 'Samaj') of Bank of India.

14. It is also pertinent to note that the statement of Narayan Havaladar reveals that the property was in fact purchased by one Pawan Bhoir for Rs.15,00,000/- and that said Pawan Bhoir had given to him

Rs.2,00,000/-as donation for temple construction and that said Pawan Bhoir had paid Rs.3,00,000/- to the Applicant No.1. This witness has stated that he too had given to the Applicants sum of Rs.55,555/- cash as the donation towards the construction of the temple. As stated earlier the Applicants had only deposited an amount of Rs.5,00,000/- which was given by Sujata Patil in the account of Narayan. The Applicant has not given account of the money received from Bhoir. The statement of said Narayan thus, prima facie supports the allegations of misappropriation.

15. It is also to be noted that the Applicant No.1 has stated that the amount received from the sale proceeds was spent on construction of the temple. It is however, to be noted that there are no records to show such expenditure or to prima facie prove that the amount received from Bhoir and Sujata Patil was in fact spent on construction of the temple.

16. The records therefore, prima facie reveal the involvement of the Applicant No.1 in committing the offence as alleged. The contention that the applicant No.1 has been falsely involved due to personal vendatta has no merits. The records prima facie reveal that

the applicant has sold the land which was donated for the welfare of fisherman community and misappropriated the sale proceeds. The offence allegedly committed by the Applicants is not a private dispute but affects the interest of the fishermen community of Borli village.

17. The records further reveal that in the application for anticipatory bail filed before the Sessions Court the Applicant No.1 in support of his application had relied upon the affidavit of Narayan Havaladar. This conduct itself indicates that the Applicant is in a position to influence the witnesses and the possibility of the applicant interfering the other witnesses who are from the same locality cannot be ruled out. Considering the above facts and circumstances, in my considered view this is not a fit case for grant of anticipatory bail to the Applicant No.1.

18. As regards the other Applicants, prima facie there is no material on record to show that they are directly involved in commission of the crime. Under these circumstances, in my considered view the applicant Nos.2 to 7 are entitled for bail. Hence the following order:-

1. The application is dismissed as against No.1.

2. In the event of arrest of the Applicant Nos.2 to 7 in Crime No.71 of 2015 registered at Revdanda Police Station, Raigad, under the offences punishable under Sections 406, 420, 465, 468, 471 read with 34 of the IPC, they shall be released on bail bonds of Rs.20,000/(Rupees Twenty Thousand Only) each with one or two sureties in the like amount to the satisfaction of the learned Judicial Magistrate, First Class, Murud.
3. The Applicants shall report to the investigating officer for 7 days from 10 am to 1 pm and further as and when required by the investigating officer for the purpose of the interrogation.
4. The Applicants shall not tamper with the evidence or influenced complainant and witnesses in any manner.
5. The Applicants shall appear before the Court on every day or as and when required by the Court.

19. Both these criminal applications stand disposed of.

(ANUJA PRABHUDESSAI, J.)