

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1561 OF 2016
(Ashok s/o Sampatrao Kutwal Vs. The State of
Maharashtra)

Mr. V.D. Salunke, Advocate for the applicant
Mr. U.S. Mote, A.P.P. for the respondent-State
Mr. M.P. Tripathi, Advocate to assist the A.P.P.

CORAM : M.T. JOSHI, J.
DATE : 06/04/2016

ORAL ORDER :

1. Heard both sides.
2. The present applicant, who is apprehending his arrest at the hands of Tuljapur Police Station, District Osmanabad in Crime No. 0068/2016 for the offences punishable under section 420, 406, 468 and 471 of the Indian Penal Code, is praying for his release on bail, in the event of his arrest.
3. The complaint filed by one Dattatraya Tatyaba Kadam would show that agricultural land bearing Survey No. 211/2 of Tuljapur was purchased for proposed Housing Cooperative Society Limited and the present applicant was the Chief Promotor of the same and 1 Hectore and 59

Rs of land was purchased in his name vide sale-deed dated 2nd July, 1986. Before purchasing the land a joint account with Bank of Maharashtra was opened. In all 47 members were there. By a cheque, the consideration from the said joint account was paid and as such, the proposed Suyog Housing Cooperative Society Limited, Tuljapur became the owner and the present applicant as a Chief Promotor was shown as purchaser.

. Thereafter, in the year 1990, 60 Rs of land was acquired by the State for construction of a school. At that time, however, the present applicant without consulting with anybody, on 1st March, 1990, behind the back of the members, got mutation entry in his own name and thereafter, withdrew the compensation of Rs. 56,232/- and appropriated the same for himself. Thereafter, many a times, the complainant as well as many members of the proposed society used to pursue the present applicant regarding the progress of the registration of the society. The present applicant, however, represented that as considerable land was acquired by the State, the plotting could not be made and divided between the members and therefore, on 7th May, 1990, another land at village Hangarga (Tul),

bearing survey No. 51/1, admeasuring 1 Hectar and 61.87 Rs was purchased by showing the present applicant as Chief Promotor. Thereafter, he started saying that since the said land was lateron reserved for certain public use by the Government and as the measurement of the land was yet tobe made, the registration of the society was postponed till 2004.

. Ultimately, the members had a meeting and it was decided that the present applicant shuld be removed from the post of Chief Promotor. In the circumstances, on 30th June, 2004, the present applicant himself made an application to the Tahsildar, Tuljapur and submitted that in his place, name of one Kalyan Namdeo Kadam be shown as Chief Promotor. However, as said Kalyan Kadam showed his inability to be the Chief Promotor, one Mahadeo Murlidhar Pawar was agreed to be the Chief Promotor. Thereafter, the procedure for registration of the society was undertaken and the society was registered.

. Thereupon, an enquiry was made with the present applicant regarding the amount of compensation he received. He, however, showed his reluctance to pay the said amount. It was further found that the land

acquisition reference was made by the present applicant in his own name and the court has enhanced the compensation to the tune of Rs. 13,14,487/- and the same is also misappropriated by the present applicant.

. On the basis of all these allegations, the offence came to be registered.

4. Learned counsel for the applicant submits that the society proposed to be registered by the applicant and some other persons is "Shri Suyog Sahakari Grihanirman Sanstha, Tuljapur" whereas the society registered is "Suyog Grihanirman Sahakari Sanstha Maryadit, Hangarga (Tul)". The false allegations are made in the complaint against the present applicant. He therefore prayed that the interim protection granted by this court to the present applicant be made absolute.

5. On the other hand, learned A.P.P. and learned counsel assisting the A.P.P. opposed the application.

6. Hearing from both sides as well as the documents placed on record and more particularly the true copy of mutation entry No. 2073 would show that on 1st March, 1990, vide mutation entry No. 1145, the

present applicant had made an application to the revenue authorities, got deleted the name of the proposed society as the owner of the proposed society as the owner and in its place, got added his own name as Ashok Sampatrao Kutwal. Thereafter, however, the mutation entry No. 2073, true copy of which is produced on record by the learned counsel for the applicant (marked "X" for the purpose of identification) mentions the application of the present applicant dated 30th June, 2004, which would show that the present applicant had requested the revenue authorities to delete his personal name and to substitute the same in the name of the proposed society. Accordingly, on 13th January, 2005, the revenue authorities had carried the correction.

7. All these revenue entries would show that while in the year 1990, the present applicant had become successful in getting the name of the proposed society deleted and getting it substituted by his own name on 30th June, 2004, he himself made an application to the revenue authorities asking for correction of the same and thus, agreeing that the proposed society would be the owner of the remaining land.

8. Further, there is no proof that the present applicant had any time shared the compensation received by him towards the acquisition either from the Collector or in view of the compensation enhanced in the land acquisition reference.

9. Considering all these facts on record, in my view, this is not a fit case for grant of anticipatory bail to the applicant. Further, the custodial interrogation of the present applicant regarding the money involved in the offence would be necessary. In the circumstances, the following order:-

10. The present application is dismissed. The interim protection granted to the applicant by this Court vide order dated 14th March, 2016 stands vacated.

[M.T. JOSHI]
JUDGE

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