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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.279 OF 2016

Vilas Prabhakar Kshirsagar and Anr. ..Applicants.

V/s.

State of Maharashtra ..Respondent.

Mr.Santaram Anant Tarale for the applicant.

Ms.Veera Shinde, APP for respondent-State.

ANTICIPATORY BAIL APPLICATION NO.352 OF 2016

Jagannath Pralhad Bhagat and Anr. ..Applicants.

V/s.

State of Maharashtra ..Respondent.

Mr.A.P.Mundargi, Senior Advocate with V.V.Purwal for applicants.

Mr. Arfan Sait, APP for respondent-State.

CORAM : AM.BADAR, J.

DATED : 9TH JUNE, 2016

P.C. :-

1. Applicants / accused in Crime No.66/2016 registered with Police Station, Sangole, District Solapur for offences punishable under sections 420, 467, 468, 471 read with 34 of the Indian Penal Code, 1860 at the instance of Ramakant Dilip Dake, Chief Officer, Municipal Council, Sangola

by these applications are praying for pre-arrest bail.

2. Heard the learned senior counsel appearing for the applicants in ABA No.352 of 2016 and the learned counsel appearing for the applicants in ABA No.279 of 2016. They argued that application for regularisation under the Maharashtra Gunthewari Vikas (Regularisation, Upgradation and Control) Act, 2001 was moved to the Municipal Council by erstwhile owner Malanbi Mohammed Rafiq Khatib and accordingly, permission under Maharashtra Gunthewari Vikas (Regularisation, Upgradation and Control) Act, 2001 was received from the Municipal Council, Sangola. Subsequently, the land in question was purchased by the applicants in ABA No.352 of 2016 and thereafter, applicants in ABA No.279 of 2016 became the owner thereof by virtue of the sale deed. Hence according to the learned counsel for applicants they are not concerned with the alleged act of cheating and forgery. Hence according to them, custodial interrogation of applicants is not at all required.

3. As against this, the learned APP submitted that in August, 2010 applicant Shubhash Soudaghar and Kumbhar

were very much present on the spot while survey of the land was being conducted by the concerned officer. Hence according to the learned APP, applicants are not entitled to the relief claimed.

4. Perused the papers of investigation as well as record made available. 81-R land from Survey No.764/2 of Sangola was purchased by one Malanbi by registered sale deed dated 6th November, 2003 from Pujari family. On purchase of this land, the said Malanbi on 22nd October, 2008 made an application under the Maharashtra Gunthewari Vikas (Regularisation, Upgradation and Control) Act, 2001 to the Municipal Council, Sangola for regularisation. Applicants In ABA No.279 of 2016 have produced the copy of this application on record at page 25 which bears the stamp of Sangola Nagar Parishad reflecting its receipt on 22nd October, 2008. Applicants have produced on record an undertaking furnished by Malanbi to the Municipal Council which are on record at pages 28 and 29. It is seen from the documents titled as "Kabje Pavti" that Sangola Municipal Council got the indemnity bond from Malanbi in the matter of permission under the Maharashtra Gunthewari Vikas (Regularisation,

Upgradation and Control) Act, 2001.

5. It is seen that subsequently on 8th April, 2010, Malanbi sold that land to applicants in ABA No.352 of 2016 namely Jagannath Pralhad Bhagat and Subhash Saudagar Dighe thereafter by sale deed registered on 3rd November, 2010 Jagannath Bhagat and Subhash Dighe sold the land bearing Survey No.764/2 to applicants in ABA No.279 of 2016 Vilas Prabhakar Khsirsagar and Hanumant Bau Kumbhar. They are stated to be partners of Sunrise Group of Constructions.

6. In the light of this background allegations in the F.I.R. needs to be appreciated. It was on 28th February, 2015 Ramakant Dake, the Chief Officer of the Sangola Municipal Council lodged the F.I.R. to the effect that the land comprising Survey No.764/2 sold by Malanbi was falling in Green Zone, still she transferred it by way of sale to Jagannath Pralhad Bhagat and Subhash Saudagar Dighe. The F.I.R. further avers that applicants Vilas Kshirsagar and Hanumant Kumbhar without disclosing anything to their erstwhile owner Malanbi Mohammed Mohammed Rafiq Khatib, furnished false

documents along with the application for regularisation under Maharashtra Gunthewari Vikas (Regularization, Upgradation and Control) Act, 2001. It is further averred that the Chief Officer after examining the documents has issued necessary certificate and then also issued necessary certificates for regularization. The Chief Officer has alleged that the forged documents were used for obtaining certificate under the Maharashtra Gunthewari Vikas (Regularisation, Upgradation and Control) Act, 2001.

7. The documents filed by the applicant in ABA No.279 of 2016 which are discussed earlier goes to show that acting on the application for regularization under Maharashtra Gunthewari Vikas (Regularisation, Upgradation and Control) Act, 2001 was moved by 22nd October, 2008 by Malanbi, necessary permission was granted. Applicants are subsequent purchasers of the land in question. As stated, forgery, if any, done in the year 2008 cannot be prima facie be attributable to applicants. Even otherwise, the entire case of the prosecution is based on documentary evidence. The learned senior counsel argued that applicants are being falsely implicated in the crime in question at the instance of husband of Malanbi as

he wants to grab the land by claiming share in the said land. The learned senior counsel argued that on 18th January, 2016 Mohammed Rafiq Salim Khatib, husband of Malanbi had filed a Caveat under the provisions of section 147A of the Civil Procedure Code against applicants / accused. The learned senior counsel further argued that subsequently, said husband of Malanbi also filed a suit for partition and separate possession alleging that he has share in the land comprising Survey No.764/2. In the light of this background, prima facie, it is seen that Mohmmmed Rafiq Salim Khatib has reason to falsely implicate applicants in the crime in question as he is claiming share in the said land which was sold by his wife way back in the year 2010. Nothing is to be recovered from applicants.

8. For the aforesaid reasons, the personal liberty of applicants needs to be protected and, therefore, custodial interrogation is not necessary and, therefore, the following order:-

(i) Both applicants are allowed;

- (ii) Earlier Orders granting ad-interim anticipatory bail to applicants are confirmed on the same terms and conditions;
- (iii) As a condition of this order, applicants / accused shall attend the Investigating Officer on every Saturday in between 11.00 a.m. to 1.00 p.m. for a period of two months;
- (iv) Applicants / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against applicants so as to dissuade him from disclosing such facts either to the Court or to any police officer and that they shall not tamper with the evidence;
- (v) Applicants / accused shall not commit an offence similar to the offence of which they are accused or suspected of the commission;
- (vi) Applicants / accused shall not leave India without the prior permission of the concerned Court;

(vii) Both applications are disposed of accordingly.

(A.M.BADAR, J.)