

Anand

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

ANTICIPATORY BAIL APPLICATION No.529 OF 2016

Dhanapal Tatya Khot .Applicant

Vs.

The State of Maharashtra .Respondent

WITH

CRIMINAL APPLICATION NO.262 OF 2016

(For Intervention)

IN

ANTICIPATORY BAIL APPLICATION No.529 OF 2016

Kumari Mangal Babu Benichetke .Intervener

IN THE MATTER BETWEEN

Dhanapal Tatya Khot .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.A.P.Mundargi, Senior Counsel i/b. Mr.Umesh R.
Mankapure, for the Applicant

Smt.Veera Shinde, APP, for the Respondent –
State

Mr.S.V.Sadavarte i/b. Mr.Kuldeep U. Nikam,
Advocate, for the Intervener

CORAM : REVATI MOHITE DERE, J.

DATE : 05.05.2016

P.C.

. Heard Learned Senior Counsel for the Applicant, learned APP for the Respondent – State and the learned counsel for the Intervener.

2. By this Application, the Applicant seeks pre-arrest bail in connection with C.R.No.45 of 2016 registered with the Jaysingpur Police Station, District – Kolhapur, for the alleged offences punishable under Sections 143, 149, 188, 380, 427, 447, & 454 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

3. The Complainant-Kumari Mangal Babu Benichetke, has lodged the aforesaid complaint as against the Applicant, Ashok Herwade and 15-20 unknown men and women. She has alleged that on 05.03.2016 at about 10.00 a.m. to 11.00 a.m., the aforesaid Applicant alongwith others

entered land bearing Gat No.93(1)(A), Survey No.385/A situated within the limits of Jaysingpur, Taluka-Shirol, District-Kolhapur, when she was on duty at the Nagarpalika. She has stated that at around 10.30 a.m., her brother-Devendra informed her that the Applicant along with Ashok Herwade and other unknown persons had entered the land and that they had destroyed her house with JCB. On her return, she took search and found that her ornaments and money were missing, pursuant to which the aforesaid FIR was registered.

4. Learned Senior counsel for the Applicant submitted that the original owner of the said property, co-accused Ashok Neminath Herwade, had sold the said property to the present Applicant-Dhanapal Khot, a Corporator of Sangli-Miraj and Kupwad City Municipal Corporation, by a registered Sale Deed dated 19.12.2008. He submitted that the Complainant is

claiming tenancy of the said property from 1952. He submits that Section 32G of the Bombay Tenancy And Agricultural Lands Act (For short "B.T. & A.L." Act) would not be applicable and that the revenue authorities had decided that the Complainant was not protected under Section 32G of the B.T. & A.L. Act, since the land was within municipal limits. He further submitted that the Complainant had lodged a similar complaint as against co-accused-Ashok Herwade (original owner) in 2004, alleging similar offences punishable under Sections 147, 427, 447, 354, 323 r/w. 149, 395 r/w. 397 of the Indian Penal Code i.e. for demolishing her house with pockland machine. He submitted that in the said case, Ashok Herwade and others were acquitted in August, 2006. He submitted that as the Complainant had failed in the proceedings, only to pressurize the Applicant, a false FIR has been lodged. He vehemently contended that the Applicant is a resident of Miraj and that

there is nothing to show that the Applicant was present at the spot, at the time of the alleged incident.

5. Learned APP opposed the Application. She has filed an Affidavit of PSI, Satyaraj Sambhaji Ghule, who is attached to the Jaysingpur Police Station, Kolhapur. She submitted that the co-accused-Ashok Herwade had filed a Civil Suit, as against the Complainant and others in the year 2004, seeking injunction, with respect to the said property and that subsequently, the Applicant was added as co-plaintiff. She submitted that the said suit, being RCS No.334 of 2004 was dismissed by the learned CJSD, Jaysingpur, against which the Applicant and Ashok Herwade filed an Appeal, which also was dismissed by the learned District Judge-1, Jaysingpur vide Judgment & Order dated 31.12.2015 passed in Regular Civil Appeal No.47 of 2011. She submitted that the Civil Suit filed

by the Complainant and others against co-accused-Ashok Herwade, seeking perpetual injunction was decided in favour of the Complainant, vide order dated 05.09.2011 passed by the learned Jt.Civil Judge, Junior Division, Jaysingpur. She submits that the said order was challenged by co-accused-Ashok Herwade in the year 2011, however, the said Appeal was also dismissed by the learned District Judge-1, Jaysingpur vide Judgment & Order dated 31.12.2015 and as such, the order of perpetual injunction restraining co-accused-Ashok Herwade, from obstructing the Complainant's possession over the suit property without due process of law was confirmed. She submitted that subsequently, as the Applicant (new owner) was unable to remove the Complainant from the said property, the Applicant alongwith others, went to the said land with JCB and demolished the Complainant's house and fled. She submits that for the said act and as ornaments, money and

other articles of the Complainant were also missing, the aforesaid FIR was lodged. Learned APP submits that no witnesses are coming forward for recording their statements, as the Applicant-Dhanapal Khot is a powerful person, being a Corporator of the Sangli-Miraj and Kupwad City Municipal Corporation. She submitted that even after registration of the aforesaid FIR, the Applicant and co-accused are continuing to intimidate the Complainant, pursuant to which N.C.No.36 of 2016 was lodged on 11.03.2016. She submitted that there are witnesses, who had seen the Applicant at the spot at the time of the incident, however, the said persons are not coming forward due to fear of the Applicant. She further submits that the CDR records clearly show that the Applicant was present at the location, where the incident took place and was not at Miraj, as is sought to be contended by the Learned Senior Counsel for the Applicant.

6. Learned counsel for the Intervener supported the submissions advanced by the learned APP.

7. Perused the papers. It appears that the Applicant had purchased the said property from co-accused-Ashok Herwade in the year 2008, by a registered Sale Deed. It is not in dispute that the Complainant was in possession of the said property, when the Sale Deed was executed between Ashok Herwade and the present Applicant and that legal proceedings were pending, with respect to the land, between co-accused-Ashok Herwade and the Complainant. It is also not in dispute, that Ashok Herwade had filed an Application seeking injunction as against the Complainant in 2004 and subsequently, in 2008, the present Applicant was impleaded as a co-plaintiff in the said suit. It is not in dispute, that the said suit seeking injunction filed by the Applicant and Ashok Herwade was

dismissed and an Appeal filed against the said Judgment and Order was also dismissed by the Appellate Court. It is also not in dispute, that the orders dismissing the suit filed by Ashok Herwade and the present Applicant as well as the order dismissing their Appeal have not been challenged. It is also not in dispute, that the Complainant had filed a suit seeking perpetual injunction as against Ashok Herwade(original owner of the property). The prayer in the said suit was "the Defendant(Ashok Herwade) be perpetually restrained from obstructing the possession of the Plaintiff (Complainant) over the suit property without following due process of law". The said suit filed by the Complainant was decreed accordingly in favour of the Complainant in September, 2011. It is also not in dispute, that the said Judgment and Order dated 05.09.2011 passed by the learned Jt.Civil Judge, Junior Division was challenged in Appeal, however, the same was dismissed by the Appellate

Court vide Judgment and Order dated 31.12.2015. It is not in dispute that this order has attained finality, inasmuch as, the same has not been challenged either, by Ashok Herwade or by the present Applicant. Thus, prima facie, it appears that the Complainant was in possession of the said land at the relevant time. Prima facie, it also appears, that as the Applicant was unable to take possession of the said land which was in possession of the Complainant, JCB was brought and the Complainant's house was demolished and destroyed. The photographs on record corroborate the said fact. It also appears that the photographs, that there is a JCB machine in the said land and that the Complainant's house, compound and borewell were demolished. The Complainant was at work at the relevant time, when the alleged incident took place. It appears from the Affidavit filed by the investigating officer, that the Applicant is an influential person, being a Corporator of the

Sangli-Miraj and Kupwad City Municipal Corporation. It appears that due to the influence of the Applicant, a standing Corporator, no witnesses are coming forward to give their statement. From a perusal of the statement of one witness, it appears that at the time of incident when the demolition was in progress and when the witnesses tried to stop the Applicant and others, they threatened her. The said witness has stated that the Applicant was present at the spot. The said fact is also corroborated by the CDR records which show that the Applicant was not at Miraj, as is sought to be contended, but was at the place where the incident took place. It also appears that while demolishing the house, Complainant's articles, money and jewelery have been stolen.

8. Considering all the aforesaid, this is not a fit case to grant pre-arrest bail to the Applicant. Accordingly, the Application stands

rejected. It is necessary to investigate, who brought the JCB machine and who were those unknown 15-20 persons present at the spot at the relevant time etc.

9. In view of disposal of the Anticipatory Bail Application, the Intervention Application does not survive and the same stands disposed of accordingly.

(REVATI MOHITE DERE, J.)