IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.679 OF 2016

1) AJAYKUMAR RAMCHANDRA MISHRA)
2) IMAMUDDIN NIHALUDDIN SHAIKH)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH
CRIMINAL APPLICATION NO.324 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO.679 OF 2016

SYED MOHAMMAD SHAH)INTERVENOR

IN THE MATTER OF
1) AJAYKUMAR RAMCHANDRA MISHRA)
2) IMAMUDDIN NIHALUDDIN SHAIKH)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Shri M.S.Mohite i/b. Shri Chetan Damre, Advocate for the Applicant.

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

Shri Niranjan Mundargi a/w. Shri Vikram R. Sutaria, Advocate for Intervenor.

A.P.I. Shri Pramod S. Shinde, Nerul Police Station, Navi Mumbai, present in court.

CORAM : A. M. BADAR

DATE : 24th JUNE 2016.

P.C. :

1 Applicants / accused in Crime No.I-35/2016 registered with NRI Sagari Police Station, Panvel, District Thane, for the offences punishable under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code (IPC), by this application, are praying for releasing them on bail in the event of their arrest.

2 The First Information Report (FIR) in question came to be lodged by Sayyed Mohd. Shah @ Hamid Abdul Kadri on 7th March 2016. It is averred by the first informant that he had purchased land from Survey No.427/1 admeasuring 39 Hectares 84 R and from Survey No.436/1A admeasuring 101 Hectares 36 R of mouza Wahal, Taluka Panvel, District Raigad, on 27th March 1962 from Sayyed Sirajul Hassan and others. According to the

informant, in the year 2015, he intended to sell some plot of lands from this land to Gautam Budhrani, and therefore, he went to the Office of Tahasildar, Panvel. There he came to know that Imamuddin Shaikh and Ajay Kumar Mishra (present applicants) who are partners of Harman Builder applied for mutation of their names in the Revenue record of this land. According to the informant, by forging his signature, a false document is created by present applicants of 16th February 1995 showing sale of his land for a consideration of Rs.45 Lac in their favour.

3 Heard learned counsel for applicants. By drawing my attention to the Memorandum of Understanding dated 11th June 1990 and Conveyance Deed dated 16th February 1995, copies of which are placed on record, the learned counsel argued that official record shows that Conveyance Deed is registered at Sr.No.1365 in the Office of the Sub-Registrar, Panvel. According to the learned Senior Counsel, consideration amounting to Rs.35.11 Lac was paid to the informant through NRE account of applicant no.1 maintained with the Bombay Merchantile Bank,

whereas balance consideration of Rs.9.39 Lac came to be paid by cash for which the informant had passed a receipt. The learned Counsel was at pains to submit that with passage of so many years, bank record is not available and accordingly, said bank had issued letters dated 17th March 2016 and 15th June 2014 to that effect. Photocopy of receipt for Rs.9.39 Lac is also pointed out. It was further argued that documents maintained in regular course by the Office of the Sub-Registrar show that the transaction is genuine. Certified copy of Index II issued on 12th August 1997 by the Office of Sub-Registrar, Panvel, reflects this Conveyance Deed with payment of stamp duty of Rs.2,70,200/- as well as payment of registration fees of Rs.5,000/-. The learned counsel further submitted that receipt at page 38 reflects payment of Rs.5,000/- towards registration charges for the document registered at Sr.No.1365 which is a Conveyance Deed. My attention is also drawn to photocopy of Day Book to point out that transaction was entered at Sr.No.1365 of 1995. It is argued that subsequently the Day book is manipulated in order to destroy evidence by tearing the corner thereof but still name of applicant Inayatullah as well as signature of the vendor i.e. the informant is reflecting in the Day Book. According to the learned counsel for applicant, even on 10th January 2004, a notice was issued to the informant through Advocate Mr.Agrawal. Even Revenue record of the land in question was corrected by mutating name of present applicants after lot of efforts. The learned counsel further argued that even applicants have lodged FIR against the informant vide Crime No.115 of 2016 with Police Station Panvel and the application for anticipatory bail of the informant was rejected and the learned Additional Sessions Judge has categorically observed that the signature found on the document appears to be that of the present informant. It is also pointed out that a civil suit bearing no.448 of 2016 is also filed by the informant for declaring that the alleged Sale Deed of the year 1995 is illegal and declaration of ownership is also claimed therein. In this view of the matter, according to the learned counsel for applicants, custodial interrogation of applicants is not warranted.

4 As against this, learned APP opposed the application by submitting that contemporaneous record in the form of Cash book does not reflect registration of the Conveyance Deed of 16th February 1995. The document registered at Sr.No.1365 in the year 1995 was, infact a Mortgage Deed of an employee of Atomic Energy Regulatory Board and during course of investigation, the certified copy as well as original thereof is also collected. Learned APP further argued that reports were called from concerned government offices and it is revealed that stamp of the concerned office below the adhesive stamp on the document is forged one.

5 I have also heard the learned counsel appearing for the informant. He argued that the Conveyance Deed *per se* is a forged document as it contains recitals that the vendor had handed over documents of title to the purchaser, but even as of today, the informant is in possession of the documents of title of the land in question. He further argued that on 4th August 1995, 4 hectares land from the land in question came to be sold by the

informant by a registered document for a consideration of Rs.12.50 Lac. As per his submission, therefore, it is impossible that the informant will sell 101 hectares land at about the same time for a meager consideration of Rs.45 Lac only. He further argued that the informant had even instituted Writ Petition bearing no. 778 of 1999 challenging the award passed by the Land Acquisition Officer in respect of this land and on allowing the petition, the informant had received all benefits flowing from the judgment and order of this court.

6 I have given anxious thoughts to the submissions so made and also perused papers of investigation. It is seen that according to applicants, they became owner of the land admeasuring about 101 hectares of Village Wahal in pursuant to the Conveyance executed on 16th February 1995 by Sayyed Mohd. Shah Qadri – the informant. In order to substantiate this transaction, reliance is being placed on the Day Book as well as certified copies of indices issued from time to time, apart from the Revenue record. However, during investigation, it is *prima facie*

found that the document registered at Sr.No.1365 is infact a Mortgage Deed executed by one Arun Kumar, an employee of Atomic Energy Regulatory Board for securing housing loan. Said Mortgage Deed was duly submitted by employee Arun Kumar for availing housing loan to his employee and the same is repaid.

7 *Prima facie* question will be, whether the document registered at Sr.No.1365 in the Office of Sub-Registrar, Panvel, is a Mortgage Deed executed by Arun Kumar or whether it was a Conveyance executed by the informant in favour of present applicants for lands at Survey No.427/1 and 436 of Village Wahal.

8 Much was argued in respect of the Day Book which contains all entries of transaction which took place at the Office of the Sub-Registrar. According to applicants, their transaction with the informant occurring on 16th February 1995 was entered in the Day book at Sr.No.1365. As against this, according to the Investigating Officer, the Day book is tampered and a corner of the relevant page is torn off. Learned counsel for applicants argued

that as the Day Book was reflecting the name of applicant Imamuddin and the transaction of the informant with applicants, applicants were not having any reason to tear off this portion.

9 Be that as it may, one will then have to look into other contemporaneous record. My attention is drawn to the Cash book maintained by the Office of the Sub-Registrar. Copy of the Cash book found in the papers of investigation does not reflect payment of Rs.5050/- allegedly made by applicants for getting the Conveyance registered. On the contrary, it is seen that the entry is in respect of payment of Rs.50/- only towards registration of the Mortgage Deed. Apart from this, it is also found during investigation that while registering the documents at the Office of Sub-Registrar, one has to pay Zilla Parishad tax. Such tax is not payable so far as Mortgage Deed is concerned, but it is payable if Deed of Conveyance is to be registered. Papers of investigation show that Mortgage Deed registered at Sr.No.1365 was exempted from Zilla Parishad tax and no such tax was collected. Record of Zilla Parishad was verified by the Investigator and it was not

showing that for registering the Conveyance on 11th February 1995 such Zilla Parishad tax was recovered and paid. Papers of investigation transpire that there is no such entry in accounts of Zilla Parishad in respect of recovery of Zilla Parishad tax while allegedly registering the Conveyance / Sale Deed dated 16th February 1995 in favour of present applicants.

10 The Investigating Officer has called for a report from the Sub-Registrar where the Sale deed dated 16th February 1995 is allegedly registered. Office of the Sub-Registrar reported the Investigating Officer that this Conveyance is *prima facie* a forged document. No doubt these observations are *prima facie* observations, but considering this material collected during investigation, this does not appear to be a case fit for grant of anticipatory bail.

11 Attending circumstances pointed out to this court also make it clear that this is not a fit case to grant anticipatory bail. Copy of Sale Deed dated 4th August 1995 executed by the

informant on 4th August 1995 shows consideration of Rs.50 Lac for 4 Hectares of land from the very same survey numbers. So far as Conveyance dated 16th February 1995 is concerned, it reflects consideration of only Rs.45 Lac for 101 Hectares of land. The disputed Sale Deed is executed just before six months of the Sale Deed dated 4th August 1995. It is seen that the informant had filed a Writ Petition bearing no.778 of 1999 whereby the award passed by the Land Acquisition Officer in respect of Survey No.427/1 of Village Wahal was challenged and ultimately that petition was allowed on 24th August 2005. The informant is reported to have received all consequential benefits. If really he was not owner of the land, due to execution of a Conveyance dated 16th February 1995, *prima facie* the informant had no reason to institute the writ petition and to contest it.

12 In the light of these observations, no case for anticipatory bail is made out.

13 The Application is rejected.

In view of disposal of this application, Intervention Application No.324 of 2016 stands disposed of.

14 Learned counsel for applicants makes a request that as civil suit for cancellation of disputed Sale Deed is still pending, investigation will not be prejudiced if interim order granting anticipatory bail to applicants is continued for a further period of four weeks.

Request so made is reasonable.

15 The order dated 16th April 2016 granting ad-interim anticipatory bail to applicants which is still in force, is further continued for a period of four weeks from today.

(A. M. BADAR, J.)