

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.889 OF 2016**

1. Shailesh Ramaniklal Shah...
2. Harlal Bhagwanram Jangid .. Applicants

vs

1. The State of Maharashtra
2. Ashok Gajanan Tambe .. Respondents

Mr.Surin Usgaonkar a/w Mr.A.K.Goel for Applicants
Mr.S.S.Pednekar Additional Public Prosecutor for State
Mr.Milind Deshmukh for Respondent no.2

CORAM: A.M.BADAR, J
DATE: 4TH AUGUST, 2016

P.C.

1. The Applicants/accused in Crime No.42 of 2016 registered police station Khalapur for the offence punishable under sections 420, 465, 467, 468,471 read with section 34 of the Indian Penal Code at the instance of the informant-Ashok Gajanan Tambe by this Application are seeking pre-arrest bail.

2. Heard learned counsel appearing for the Applicants/accused. He argued that recitals in the FIR shows that the land in question was purchased in joint names of both Applicants as well as the informant. By drawing my attention to the Memorandum of Understanding dated 5 November 1990 the learned

counsel argued that clauses 2,3 and 4 of the Memorandum of Understanding shows that the entire consideration for purchasing 33 acres of land was contributed by Applicant no.1-Shailesh Ramniklal Shah. It is argued that Shailesh Ramniklal Shah was entitled to sell out the entire lands as per Memorandum of Understanding between the parties. The learned counsel further argued that an Irrevocable Power of Attorney was executed by the informant on 15 April 2006 thereby giving powers of sale of land to Applicant no.1-Shailesh Ramniklal Shah. The learned counsel argued that by engaging a private Hand-Writing expert the thumb impression on the Power of Attorney and signature on the Memorandum of Understanding was got examined by Applicants and the thumb impression as well as the signature was found to be that of the informant. The learned counsel argued that after filing of a Special Civil Suit an FIR came to be lodged against them.

3. I have heard the learned APP who opposed the Application by arguing that the Power of Attorney dated 15 April 2006 is a forged document and the statement of the Executive Magistrate does not show that it was signed in his presence. The learned APP further argued that Notary Mr.A.P.Maru refused to

acknowledge his signature on the Power of Attorney.

4. I have also heard learned counsel for the Intervener. He argues that the Memorandum of Understanding is a forged document. The Advocate in whose presence it was signed cannot be traced by the Postal Department when notice was sent to him by the informant. The learned counsel further argued that 7/12 extracts in the revenue records of the land in question stands in the name of the informant. The learned counsel further argued that the Power of Attorney relied upon by Applicants does not bear the thumb impression of the informant. A bare perusal of the signatures on the documents with that of admitted signatures of the informant will show that the documents relied by Applicants are forged documents. The Notary had made a complaint about the Power of Attorney to the police. The date and number of the Notary is not there on the notarised document. The learned counsel further argued that the informant had also got the disputed thumb impression and signatures examined through his private Hand-Writing Expert and forgery is writ large from the three reports of the private Hand-Writing Expert collected by the informant.

5. By relying upon the Judgment of the Hon'ble Supreme Court in the matter of **SURAJ LAMP AND INDUSTRIES PRIVATE LIMITED vs STATE OF HARYANA AND ANOTHER (2012) 1 Supreme Court Cases 656** the learned counsel argued that transfer of land on the basis of Power of Attorney result in evasion of tax, generation of black money and other ill-effects as reflected from para 4 of the said Judgment.

6. By relying on the Judgment in the matter of **MARUTI NIVRUTTI NAALE VS STATE OF MAHARASHTRA & anr 2012 (9) SCC 235** the learned counsel submitted that in the matter of a forged document anticipatory bail cannot be granted. My attention is drawn to para 12 and other paras of this Judgment. Reliance is also placed on the Indian Stamp Act and particularly Entry No.48 as well as section 3 of the Benami Transaction (Prohibition) Act, 1998 in order to show that the transaction reflecting benami transactions is punishable with imprisonment of three years.

7. The learned counsel also relied on Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1988 which permits possession of 54 acres of agricultural lands.

8. Perused the FIR lodged by the informant-Ashok Gajanan Tambe. Averments in the FIR are to the effect that he was inducted as a partner by Applicant no.1 Shailesh Ramniklal Shah and in partnership he as well as Applicants have purchased 33 acres of land at Mouje Khalapur. Upon being asked whether the informant had shelled out any money for purchase of this land, learned counsel for the Intervenor was not in a position to give satisfactory answer. Though voluminous documents are placed on record by the Intervener he has not filed any documents in order to show that he had contributed a single pie for purchase of 33 acres of land. Informant-Ashok Gajanan Tambe who has described his occupation as 'service' and residence at Sagar Building has not placed on record any document to show that he spent the money on purchasing the land. He appears to be residing in the servant room of the said building.

9. Be that as it may, Applicants are relying on Mutation Entry dated 5 November 1990, clauses 2,3 and 6 of which are material. These clauses go to show that the Applicants and the informant had agreed to purchase land in their joint names. Clause 3 shows that for purchase of land, Applicant no.1 Shailesh Ramniklal

Shah shall pay the entire purchase price. Clause 6 shows that Applicant no.1 Shailesh Ramniklal Shah will have sole right to sell out the lands in question. Reliance is also placed on the irrevocable Power of Attorney allegedly executed by informant-Ashok Tambe. This Power of Attorney gives power to sell the lands in question to Applicant no.1 Shailesh Ramniklal Shah.

10. Both parties have placed the reports of private Hand-Writing Expert on record which are running contrary to each other. The learned APP has stated that the disputed documents have already been sent to the Government Examiner of Documents for his examination and report but the report is still awaited.

11. It is seen from the record that Applicant no.1-Shailesh Ramniklal Shah had initiated Special Civil Suit No.447 of 2015 against the informant as well as defendants therein. In the said suit, claim for declaration of ownership is made apart from a declaration that the Sale Deeds of the land in question executed by the informant be declared as null,void and illegal. Similarly, a declaration is also sought that the registered Relinquished Deed dated 2 March 2015 and registered Power of Attorney dated 3 June 2015 is not binding

on Applicants. Suffice to state that the competent Civil Court is seized of the subject matter of the present crime.

12. After adjudicating the matter on merits, during the trial it will have to be seen whether the transaction in question is hit by the Benami Transactions (Prohibition) Act, 1988 or not. Therefore, for deciding the matter for anticipatory bail, the judgment in the matter of **SURAJ LAMP AND INDUSTRIES PRIVATE LIMITED** (supra) is not applicable. **MARUTI NIVRUTTI NVALE** is the case whether the accused therein has relied upon the documents which were allegedly forged before the public authority for obtaining the necessary permission. This judgment is also not applicable in the instant case in view of the fact that the competent Court is also seized of the matter of genuineness of documents.

13. Other aspects of the Indian Stamp Act, 1899 and other relevant cases relied upon by the learned counsel for the Intervener can be looked into at the time of trial of the case on merits by the concerned Court if finally the Investigator chooses to file a charge sheet against present Applicants. It is apparent that the entire case against Applicants is based on documentary evidence. It is not the

case of the Investigator that the Applicants are not co-operating in the investigation of the crime in question. Applicants have submitted themselves to the Investigator. The transactions appears to be predominantly of a civil nature wherein civil rights of the parties have to be adjudicated. It hardly needs to be point out that arrest brings humiliation and disgrace. It affects not only the accused but, his family members also.

14. Considering the entire material which is available against the present Applicants, I am of the considered opinion that this is not a case where custodial interrogation of Applicants is warranted. Hence, following order :

O R D E R

- (i) The Application is allowed.
- (ii) Order granting ad-interim protection to the Applicants/accused on 17 May 2016 is confirmed on same terms;
- (iii) Applicants/accused shall inform their latest place of residence and cell number after their release and continue to inform the change in residence or cell number, if any from time to time to the Investigating Officer of the concerned police station and on filing the

charge sheet to the concerned Court;

(iv) Applicants shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of accusation against them so as to dissuade them 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 co-operate for expeditious disposal of the trial;

(vi) Applicants shall co-operate with the Investigating Officer by visiting the concerned police station as and when reasonably called.

(A.M.BADAR, J)