

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1140 OF 2015

Shri Hiralal Kalpu Gupta ... Applicant
Vs.
The State of Maharashtra ... Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1145 OF 2015

Smt.Sushma Ashok Rasal ... Applicant
Vs.
The State of Maharashtra ... Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1146 OF 2015

Jayshree Rohit Bhagwat ... Applicant
Vs.
The State of Maharashtra ... Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1147 OF 2015

Sou. Yamunabai Nandkumar Bhagwat ... Applicant
Vs.
The State of Maharashtra ... Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1148 OF 2015

Sou. Sangeeta Arun Bhagwat ... Applicant
Vs.
The State of Maharashtra ... Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1150 OF 2015

Krishna R. Dhopte & anr. ... Applicants
Vs.
The State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.1151 OF 2015

Santosh V. Boldhane	... Applicant
Vs.	
The State of Maharashtra	... Respondent

WITH
CRIMINAL APPLICATION NO.826 OF 2015

Ramesh Parshuram Mahajan	... Applicant
Vs.	
Vijay Ramchandra Angre & ors.	... Respondents

WITH
CRIMINAL APPLICATION NO.827 OF 2015

Ramesh Parshuram Mahajan	... Applicant
Vs.	
Smt.Nirmala Reva Chaudhary & ors.	... Respondents

WITH
CRIMINAL APPLICATION NO.828 OF 2015

Ramesh Parshuram Mahajan	... Applicant
Vs.	
Mahendra Amichand Jain & anr.	... Respondents

Mr.R.V. Pai a/w P.D. Dalvi for the Applicants in all ABAs

Mrs.P.P. Shinde, APP, for Respondent – State

Mr.Amin Solkar a/w Aameer Kale for Intervener in Application
Nos.826/2015, 827/2015 and 828/2015

Mr.V.D. Dalvi, PSI, Shivaji nagar Police Station – present

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **APRIL 11, 2016**

P.C.:

1. As the complainant and the C.R. in all these Anticipatory Bail Applications are one and the same, these applications are heard together and being disposed of by this common order.

2. The applicants/accused are prosecuted for the offences punishable under sections 406, 420, 467, 468, 479 r/w 34 of the Indian Penal Code in C.R. No.I-276 of 2014 registered with the Ambernath police station, Thane. The offence is registered at the instance of one Ramesh Parshuram Mahajan on 19.10.2014. Ramesh Mahajan is the owner of the land i.e., gat No.45 at village Morivli, Survey No.35/4B and 41/9B admeasuring 6 acres and 5 gunthas, presented a private complaint before the learned Magistrate at Ulhasnagar. The learned Magistrate gave directions under section 156(3) of the Code of Criminal Procedure to the police to enquire into the matter, pursuant to which the police registered the offence at C.R. No.I-276 of 2014 against all these applicants/accused. It is the case of the prosecution that the complainant who is the owner of the land admeasuring 6 acres and 5 gunthas on the survey number mentioned above, has purchased the land on 1.2.1964 alongwith his mother. The names of the complainant and his mother are mentioned in 7x12 extract. It is his case that his mother expired in 1991 and in December, 2011, one Karmuddhin Mustaq Khan approached the complainant with a proposal that he was interested in purchasing 10 gunthas of his land at village

Morivali. At that time, he realised that in the 7x12 extract, the names of his mother and him were mentioned as owners of the land admeasuring only 1053.79 sq.mtrs out of the total 6 acres and 5 gunthas. After enquiry, he realised that the land owned by him was fragmented in 43 plots and those lands were sold by accused No.1 Sadashiv Ganesh Shewade, a resident of Girgaon, to different persons during the year 1970-1974, on the basis of forged power of attorney issued in favour of accused Sadashiv Shewade. It is the case of the complainant that the said land was dry land. It was not non-agricultural land. However, the accused Sadashiv Shewade, Digambar Joshi and R.V. Gokhale have prepared false documents and sold the land in 43 plots to different persons. The land was not plotted nor was non-agricultural. He, therefore, realised that the applicants-accused have in connivance with accused Nos.1 to 3, Shewade, Digambar Joshi and R.V. Gokhale, purchased the plots out of these 43 plots and thus, committed the offence of cheating, forgery and misappropriation of the property alongwith these three accused and therefore, lodged complaint. For the sake of convenience, a chart of the transactions is reproduced thus:

Application No.	Name of the Party	Plot No.	Year	Transaction
ABA/1140/2015	Hiralal Kalpu Gupta	32	04/11/1970	Purchased by anuradha Madhukar Pathak from PA of Complainant
			07/04/2003	Sold out to the present Applicant by Anuradha Pathak

ABA/1145/2015	Sushma Ashok Rasal	21	07/04/1973	Purchased by Bhimrao Arjunrao Surve from PA of Complainant
			12/30/1899	Sold out to Keshavan Raghavan Ravichandran and Vimala Shridhar Kaimal by Bhimrao
			12/30/1899	Purchased by present Applicant from Keshavan and Vimala
		22	12/30/1899	Purchased by Vasant Manik Sonar from PA of Complainant
			12/04/1989	Sold ot to S.s. Sayvel by Vasant Sonar
			06/29/1905	Purchased by the Applicant from Sayvel
ABA/1146/2015	Jayashree Rohit Bhagwat	16	12/30/1899	Purchased by Prabhavati D. mathure from Complainant's P/A
ABA/1147/2015	Yamunabai Nandkumar Bhagwat	15	07/04/1973	Purchased by Nisha Shashikant Likhite from P/A of Complainant
			12/30/1899	Sold to the Applicant by Nisha S. Likhite
ABA/1148/2015	Sangeeta Arun Bhagwat	34	12/30/1899	Purchased by Vasudha Vasant Bhatavadekar from PA of Complainant
			03/12/2007	Purchased by the Applciant from Vasudha
ABA/1149/2015	Arun kashinath Bhagwat	10	12/30/1899	Purchased by Radhabai Purushottam moharil from PA of Complainant
			04/05/2006	Purchased by the Applicant from Radhabai Moharil
ABA/1150/2015	Krishna Rambhau Dhopate	11	12/30/1899	Purchased by Ramesh Ganesh thosar from PA of the Complainant
			12/30/1899	Purchased by Nira Krishna Dhopte (applicant No.2)
ABA/1151/2015	Santosh Vasudeo Boldhane	38	12/04/1973	Purchased by Shrikrishna Mani from PA of Complainant
			12/30/1899	Purchased by Tarabai Vasudeo Boldhane and Santosh Vasudeo Boldhane from Shrikrishna Mani
Appln No.826/2015 (for cancellation of Ant.Bail)	Vijay Ramchandra Angre	34	12/30/1899	Purchased By Vasudha Vasant Bhatavadekar
			03/12/2007	Sold out to Sangeeta Arun bhagwat
			03/12/2007	Purchased by Vijay Angre
		37	07/04/1973	Purchased by Kautik Nimba Pachpande
			06/11/2007	Sold out to Pradeepkumar Satkinkardas
			12/30/1899	Purchased by Vijay Angre

Appln. No.827/2015 (for cancellation of ant. Bail)	Nirmala Reva Choudhary and Reva Raoji chaudhary	43	12/30/1899	Purchased by the Applicant
Appln. No.828/2015 (for cancellation of ant. Bail)	Mahendrakumar Amichand Jain & ors.	18	07/03/1973	Purchased by Jagannath Damodar Raje
			12/30/1899	Purchased by Alampallam Varda Iyer
			12/30/1899	Purchased by Applicant from Alampallam
		19	07/04/1973	Purchased by Ramchandra Govind Khanwilkar
			12/30/1899	Purchased by Mary Ravindran from Khanwilkar
			03/12/2007	Purchased by Sadhana Raju Shenavekar
			12/30/1899	Purchased by Applicant
		20	07/04/1973	Initially purchased by Vilasrao Bapusaheb Mohite
			12/30/1899	Sold out to Vadasery Narayan Shridhar
			12/30/1899	Purchased by Applicant
		23	12/30/1899	Purchased by Sudhakar Dattatrya Naik
			12/30/1899	Purchased by Prabhakar Patil from Sudhakar Niak
				Sold out to Raju Bukka
			12/30/1899	The Applicant purchased the same

3. The learned Counsel for the applicants/accused has submitted that this land was sold to some other persons and the present applicants/accused are second or third purchasers of the land. It is further submitted that the applicants/accused are bonafide purchasers of the land. They are not concerned with forgery or fake power of attorney which was executed by the complainant and his mother in favour of Shewade. It is further submitted that the first sale has taken place in the years 1970 to 1971, 1973 to 1974. he pointed out that a civil suit was filed by the

complainant and they are pending, however, no interim order is passed in the said matter. He further relied on the sale deed entered into by Shewade as a power of attorney of Ramabai Mahajan and Ramesh Mahajan with the previous land owners from whom the present applicants/accused have purchased the lands. The learned Counsel pointed out that in 7x12 extracts of 1970, the names of first purchasers were entered immediately after the sale deed was executed. He further pointed out a statement filed by the complainant before the ULCA on 11.7.1979, where the area of the land bearing gat No.45 of village Morivali owned by the complainant is shown as 5632.7 sq.mtrs. the learned Counsel has further submitted that the applicant-accused are innocent and their custodial interrogation is not required in view of the judgment of the Supreme Court in the case of **Arnesh Kumar vs. State of Bihar**¹. The learned Counsel has pointed out that the applicants/accused have attended the concerned police station and cooperated with the Investigating Officer.

4. Learned Prosecutor as also the learned Counsel for the complainant have opposed these applications on the ground that neither the complainant or his mother or any family member sold this land to any person; he did not execute power of attorney in favour of Sadashiv Shewade; that the power of attorney which was used for sale of the land

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with the other applicants/accused is forged. It is further submitted that the applicants/accused were aware of the forged power of attorney and there was a nexus between the applicants/accused and the Sadashiv Shewade. They had knowledge that this power of attorney is forged. He further submitted that on the agreement, which has taken place between one Vijay B. Desai, the power of attorney holder and the K.R. Raveendran in respect of the said land on 23.1.2007, the photographs affixed and the persons signed thereon are different. He submitted that the photograph of one K.R. Raveendran and Kaimal are bogus and they are not the same persons. He relied on the affidavit filed by the complainant. He submitted that his huge property was sold by Sadashiv Shewade to all the applicants/accused and they all have conspired to dispose of this land which was not in fact either plotted or Non-agricultural.

5. Perused the FIR, the relevant documents which are pointed out by the learned Counsel for both the sides. It appears from the FIR that the principal accused Sadashiv Shewade who was resident of same locality, where the complainant was residing, has prepared and doctored the power of attorney of the complainant and his mother in favour of accused No.1 and on the basis of that power of attorney, he has sold the land owned by the complainant in 43 plots to various people. The applicants/accused are one of the purchasers of these plots. However, the facts disclose that the applicants/accused have not purchased directly

from Sadashiv Shewade but they purchased the land as a second or third hands and prima facie, this cannot establish any nexus between the accused No.1 and the present applicants/accused. If the photographs or the signature appearing on the last page of the sale deed are bogus and if the persons, whose names and the photographs are used, are alive and known, then, it is necessary to point out the statements of such persons denying their photographs or their signatures appearing on the deed of conveyance. No such statements are pointed out by the prosecution and it is very difficult at this stage to form opinion that the photographs or the signatures appearing on the deed of conveyance are forged. The civil cases filed by the complainant are pending before the Civil Judge, Junior Division, Ulhasnagar.

6. Under such circumstances, I am of the view that it is a case where pre-arrest bail can be granted to the applicants/accused. Accordingly, the Anticipatory Bail Applications are disposed of on the following terms:

ORDER

- i) In the event of arrest, the applicants-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.25,000/- each, with one or two solvent sureties in the like amount;
- ii) The applicants-accused shall cooperate with the Investigating

Officer and attend the concerned police station on every Friday between 10 am to 12 noon, till 30.4.2016;

- iii) The applicants-accused shall not tamper with the evidence or pressurise the complainant;
- iv) The applicants-accused shall not indulge into any criminal activity;
- v) The applicants-accused shall not abscond or leave India without prior permission of the Court and furnish their permanent address to the Investigating Officer alongwith documentary proof of his address;
- vi) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

7. In view of the above, Criminal application Nos.826 of 2015, 827 of 2015 and 828 of 2015 are disposed of.

(MRIDULA BHATKAR, J.)