IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1944 OF 2015

Kamal Jugraj Jain … Applicant
Vs.
The State of Maharashtra … Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.1951 OF 2015

1.Jamir Chhotu Sayyad
2.Eshak Vazir Shaikh … Applicants
Vs.
The State of Maharashtra … Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.1952 OF 2015

Azhar Mushtaq Shaikh … Applicant
Vs.
The State of Maharashtra … Respondent

Mr. Aniket U. Nikam for the applicant in ABA 1944/2015.
Mr. M. B. Zanwar for the applicants in ABA 1951/2015 and ABA 1952/2015.
Mr. Arfan Sait, APP for the State.
Mr. P. R. Shikalgar, API, Kondwa Police Station, Pune is present.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 18th February, 2016.

P.C. :

. These are the applications for anticipatory bail filed by the aforesaid applicants apprehending their arrest in C.R. No.422/2015 registered with Kondwa Police Station, Pune for offences punishable u/s.420, 465, 468, 471 r/w. Sec 34 of IPC.

2. The case of the prosecution in brief is that one Smt. Polki Vimal Reddy, who is a permanent resident of District Karnul, Andhra Pradesh, owns 5 R of land situated at Survey No.12/1/1, Undri, Taluka Haveli, Pune. She had purchased the said land on 18/10/2001 from one Prabhakar Babanrao Kamathe by Deed of Sale dated 18/10/2001 bearing registration No.8597/2001. The said Smt. Polki Reddy received a notice on 21/10/2014 from Circle Officer, Hadapsar, Pune to attend the office on 18/11/2014 and 19/11/2014. When she attended the office of Circle Officer, Hadapsar, she learnt that one Shabnam Nasir Sayyad claiming to be her power of attorney had sold her property by Deed of Sale dated 13/8/2014 to the present applicants Kamal Jain (ABA 1944/2015) and Jamir Sayyed (ABA 1951/2015). The applicant Eshak Vazir Shaikh was a witness to the said Sale Deed. She also learnt that the applicants Kamal Jain and Jamir Sayyed had sold the said property by Sale Deed dated 19/12/2014 to the applicant Azhar Mustak Shaikh(ABA 1952/2015). The complainant has stated that she had not executed any Power of Attorney in favour of said Shabnam Sayyad. She therefore lodged the FIR, pursuant to which the aforesaid crime came to be registered against the aforesaid applicants and other co-accused.

3. Mr.Nikam, the learned Counsel representing the applicant in ABA 1944/2015, has submitted that the applicant is a bonafide purchaser. He has further stated that the applicant is not related either to Shabnam or to the other purchasers and that he was not aware that the Power of Attorney was forged. Learned counsel Shri Nikam submits that if the applicant to know that the Sale Deed was forged he would not have made an application before the Circle Officer and thus disclose the execution of the sale to the first informant. He has submitted that the applicant did not in any manner facilitate execution of the Power of Attorney alleged to be forged. He has submitted that the applicant has already joined the investigation and that the Investigating Officer has thoroughly interrogated him. He therefore claims that the presence of the applicant is not required for the purpose of custodial interrogation or investigation.

4. Mr. Zanwar, the learned counsel for the applicants (ABA 1951/2015 and ABA 1952/2015) has submitted that there is no prima facie material to show that the Power of Attorney is forged. He has further submitted that the Power of Attorney, which was duly notarized, cannot be said to be forged on the basis of the statement made by the complainant. He has further submitted that the applicants had issued a public notice and obtained search report before entering into the Sale

Deed and as such no intention or motive can be attributed to the applicants who are the subsequent purchasers and the applicant who had acted as a witness to the Sale Deed. He has further submitted that though the Investigating Officer in his affidavit has stated that the applicants have also grabbed the adjoining land, the owner of the said land has not lodged any complaint against the applicants. He has submitted that the applicants have been falsely implicated in the crime. He further claims that the nature of the allegations made against the applicants do not justify custodial interrogation.

5. Learned APP has submitted that the applicants are the members of land grabbing mafia. He has submitted that the modus operandi of the applicants is to identify the lands owned by the people from different States and thereafter to enter into sale transactions on the basis of false and fabricated Power of Attorney. He has submitted that first informant is a resident of Andhra Pradesh. The absconding accused, Shabnam had executed a forged Power of Attorney and on the basis of the said Power of Attorney she sold the land to the applicants. Learned APP has further submitted that the applicant, i.e. subsequent purchaser, is also a distant relative of Shabnam Sayyed. Learned APP has further submitted that in the course of the investigation, the Investigating Officer has also

come across the Power of Attorney dated 3/11/2005 allegedly executed by one Vijay Balkrushna Choudhary, native of Uttar Pradesh, in favour of Shabnam Sayyed, the absconding accused. The present applicants have also entered into a executed Sale Deed dated 13/8/2014 with Shabnam Sayyed in respect of land ad-measuring 2.5 R owned by Vijay Choudhary and thereafter by Sale Deed dated 19/12/2014 they have again sold the said land to Guddu Mehbub Shaikh and Azhar Mustak Shaikh. Learned APP has submitted that the said Shabnam Sayyed and the other co-accused are absconding. The learned APP submits that the custodial interrogation is necessary for the thorough investigation of this crime and also to ensure whether the applicants have committed such crime in respect of other properties.

6. I have perused the records and considered the submissions advanced by the learned counsels for the applicants and the learned APP for the State. The FIR reveals that Smt. Polki Reddy is the owner of the land ad-measuring 5R surveyed under Survey No.12/1/1, Undri, Tal. Haveli, Pune. The records prima facie reveal that said Smt. Polki Reddy had received a notice from the Circle Officer on 18/1/2014. She attended the office of Circle Officer and realized that Shabnam, claiming to be her Power of Attorney had sold her property to the applicants Kamal Jain,

Jamir Sayyed and one Sachin Sharma by Deed of Sale dated 13/8/2014. The FIR prima facie reveals that the first informant had not executed any Power of Attorney in favour of said Shabnam Sayyed, who is an absconding co-accused.

7. A perusal of the Power of Attorney prima facie reveals that the stamp paper on which the said Power of Attorney was drawn was purchased by the said Shabnam Sayyed. It is also pertinent to note that the the said Power of Attorney was purportedly executed in the year 2002. It is however be noted that in the year 2005, Smt. Polki Reddy had entered into an agreement with one developer Mr. Mukesh V. Charbhe and Mrs. Ritu S. Milaney for development of the said property. The said agreement was not executed through the Power of Attorney but was signed and executed by Polki Reddy. If at all the first informant Smt. Polki Reddy had indeed executed the Power of Attorney in favour of Shabnam Sayyed in the year 2002, the agreement executed in the year 2005 would have been executed through the Power of Attorney. At this stage there is nothing on record to indicate that apart from executing the said Sale Deed, the co-accused Shabnam had committed or performed any other act on behalf of the first informant on the basis of the said Power of Attorney.

8. The records reveal that said Shabnam, alleging to be the

Power of Attorney of Polki Reddy had executed Sale Deed dated 13/8/2014 and had sold the said property to the applicants Kamal Jain, Sachin Sharma and Jamir Sayyad for Rs.30,00,000/-. The records indicate that the said Jamir Sayyad is a brother-in-law of said Shabnam Sayyed.

9. A perusal of the Sale Deed dated 13/8/2014 prima facie indicates that the applicant Kamal Jain had paid consideration of Rs.10 Lakhs out of which Rs.5 Lakhs was paid by cheque and the balance consideration of Rs.5 Lakhs was paid in cash. The bank statement of the applicant Kamal Jain indicates that the cheque dated 13/8/2014 was not issued in favour of the Power of Attorney Shabnam Sayyed but was issued in the name of Sachin Sharma, the absconding accused, who is also one of the purchasers of the said property. This fact itself prima facie indicates that the Sale Deed was not genuine. Furthermore, the bank statement does not indicate that the applicant Kamal Jain had withdrawn any cash of Rs.5 Lakhs from the said account or that an amount of Rs.5 Lakhs was paid to the power of attorney Shabnam Sayyed. Thus the material on record prima facie indicates that no consideration was paid in favour of Power of Attorney and in turn to the original owner of the property.

10. The Sale Deed dated 13/8/2014 further states that the

applicant Jamir Sayyad had paid sale consideration of Rs.10 Lakhs. The learned APP has submitted that the applicant has not given any details of the bank or the account from which said amount was paid. Thus, at this stage, there is no prima facie material to indicate that the applicant Jamir had paid any consideration.

11. Similarly, the said Sale Deed states that the other purchaser Sachin Sharma the absconding accused had paid Rs.5,000 by cheque No.793776 dated 13/8/2014 drawn on Intestial Bank, Pune. The word 'Intestial Bank' which is handwritten prima facie appears to be a wrong entry since no bank by such name in fact exists. Be that as it may, since this applicant is absconding the Investigating Officer has not been able to ascertain the particulars of the payment made by the said absconding accused.

12. A perusal of the said Sale Deed dated 19/12/2014 further indicates that the said Kamal Jain, Sachin Sharma and Jamir Sayyed had sold the property to Guddu Shaikh and Azhar Shaikh by Deed of Sale dated 19/12/2014 for total consideration of Rs.35 Lakhs. A perusal of the said Sale Deed indicates that the purchaser Guddu Shaikh had paid to the applicant Kamal Jain a sum of Rs.5 Lakhs by cheque No.32787 dated

19/12/2014 drawn on Axis Bank and the amount of Rs.5 Lakhs was paid to Azhar Shaikh by cheque No.32788 dated 19/12/2014 drawn on Axis Bank. The bank statement of the applicant No.1 does not indicate that the applicant Kamal Jain had received an amount of Rs.5 Lakhs. Mr. Nikam, the learned Counsel, on instructions, submits that the applicant Kamal Jain had not received an amount of Rs.5 Lakhs allegedly paid by cheque No.32787 dated 19/12/2014 by Guddu Shaikh. The Learned APP has also submitted that the applicant Jamir Sayyad has also not produced any bank statement to show that he has received Rs.5 Lakhs which was allegedly paid by Guddu Shaikh.

13. The aforesaid facts prima facie indicate that the Power of Attorney as well as the sale transactions were forged and fabricated executed with an intention of grabbing the land of Polki Reddy. The records further indicate that the applicants herein have also sold the adjoining property owned by Vijaya Reddy, a native of Uttar Pradesh by adopting the same modus operandi. Needless to state that such incidents of land grabbing are on rise and need to be curbed by thorough investigation.

14. For the reasons stated above the applicants Kamal Jugraj

Jain, Jamir Chhotu Sayyad and Azhar Mushtaq Shaikh are not entitled for pre-arrest bail.

15. The record indicates that the applicant Eshak Vazir Shaikh (ABA No. 1951/2015) was only a witness to the Sale Deed. There is no prima facie material to indicate that he is involved in forging the Power of Attorney or the sale transaction. Considering the above fact in my considered view, the applicant- Eshak Vazir Shaikh is entitled for bail.

16. Under the circumstances ABA No.1944/2015 and ABA N0.1952/2015 are dismissed. The ABA No.1951/2015 is dismissed qua the applicant No.1-Jamir Chhotu Sayyad. The Applicant No.2- Eshak Vazir Shaikh is granted pre-arrest bail on the following terms and conditions:

i) In the event of the arrest of the applicant- Eshak Vazir Shaikh in C.R.No.422/2015 registered with Kondwa Police Station, Pune, he shall be released on furnishing bail bond of Rs.40,000/- (Rupees Forty Thousand Only) with one solvent surety in the like amount, to the satisfaction of the learned Additional Sessions Judge, Pune.

ii) The applicant Eshak Vazir Shaikh shall report to the

Investigating Officer, initially for a period of 7 days between 10 a.m. and 1 p.m., from the date of receipt of this order and thereafter as and when required by the Investigating Officer.

iii) The applicant Eshak Vazir Shaikh shall not leave Pune District without prior permission of the learned Additional Sessions Judge, Pune, till filing of the chargesheet.

(ANUJA PRABHUDESSAI, J.)