

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1367 OF 2017

Mohammad Waseem s/o.  
Ahmad Aleem and Anr.

**....Applicants.**

**Versus**

The State of Maharashtra

**....Respondent.**

WITH  
CRIMINAL APPLICATION NO. 1370 OF 2017

Afsari Begum w/o. Iqbal Salim Gaus

**....Applicant.**

**Versus**

The State of Maharashtra

**....Respondent.**

Mr. N.V. Gaware, Advocate for applicants.

Mr. S.W. Munde, APP for respondent/State.

**CORAM : T.V. NALAWADE, J.**  
**DATED : April 19, 2017.**

**ORDER :**

1. Both the applications are filed for relief of anticipatory bail. Both the sides are heard. Papers of investigation were made available for perusal of this Court.

2. The crime is registered on the basis of report given by one Dhansing Ramsing Wani, who is the owner of some portion of land Gat No. 37 situated at Tisgaon, Tahsil and District

Aurangabad. His cousin Shivilal Chintaman Wani has also share in this property. They wanted to sell portion of 1 H. of their share which they were having in this land. They got acquainted with Iqbal Saleem Mohammad Gous, who at that time was working in the office of Land Records. He expressed willingness to purchase the property, but he said that as he was in Government emploment, it was not possible to him to purchase the property in his name. However, agreement was made with Iqbal Saleem Gous and he agreed to pay the amout of Rs. 65,00,000/- (Rupees sixty five lakh) for purchasing 1 H. land. According to the complainant. On 24.8.2007 the agreement was executed on stamp paper and on the day of agreement, the amount of Rs.1,00,000/- (Rupees one lakh) was given as earnest money by the Iqbal. It is contended that there was the agreement to give remaining amount at the time of execution of sale deed.

3. It is the contention of the complainant that Iqbal then contacted him and said that as he was in Government employment and as the document was not to be executed in his favour, some document needs be executed in favour of his brother in law Mohammad Sarwar Pasha. It is the case of complainant that on the request of Iqbal, they executed General Power of Attorney on 18.8.2008 and it was registered in the

office of Sub-Registrar. It is contended that the remaining amount was never given to them and the amount was to be paid at the time of execution of sale deed. It is contended that as there was some restriction on disposal of the property, the restriction was to be removed first and after that the transaction was to be completed. It is the contention of the complainant that it was told to them by Iqbal and Sarwar Pasha that they had started the process for obtaining permission and under that pretext, they avoided to make payment.

4. It is the case of complainant that in the year 2010, they learnt that accused and Sarwar Pasha were selling the plots from aforesaid property and they had prepared in all 101 plots. They made inquiry and they learnt that no permission was obtained from District Collector, the land was not converted to non agricultural (N.A.) purpose and the plots were prepared and Sarwar Pasha was selling the property. They learnt that nephew of Sarwar Pasha namely Mohammad Waseem, present applicant No. 1 and his partner Muzaffar Khan, present applicant No. 2 (both in Criminal Application No. 1367/2017) were involved in selling of the plots. It is the contention of the complainant that they made inquiry with these persons, but threats were given to them that amount will not be given and they should not again

come to the property. They realised that they were deceived and then they approached police. It is also contended that subsequently, notice was given by them and so called Power of Attorney was cancelled. It is their contention that they wanted to execute the Power of Attorney for obtaining permission, but by deceiving them, some contents were added to show the Power of Attorney was given to sell the property.

5. The property is situated at the outskirts of Aurangabad city. Even in the year 2007, the land was worth atleast Rs. 40,00,000/- to 50,00,000/- (Rupees fourty to fifty lakh) per Acre and it is the case of complainant that there was agreement of sale for consideration of Rs. sixty five lakh. In spite of that circumstance, the applicants are trying to rely on the document which is called as Power of Attorney and it shows that right to sell the property was purchased for consideration of Rs.6,08,000/- and it was shown that the amount was already paid to the owner. In view of these circumstances, this Court had asked the learned counsel for applicants to show the record or account extract on the basis of which it can be inferred that substantial amount of consideration was paid and only after that the so called Power of Attorney was executed in favour of Sarwar Pasha. The learned counsel showed the account extract of Afsari

Begum, who is applicant from second proceeding. She was having some amount and in the month of September, there was withdrawal of Rs.4,00,000/- (Rupees four lakh) in previous month. This circumstance can no way help the applicants to prove that they had paid the amount as agreed in the year 2007. The learned counsel submitted that there is possibility that document of agreement 2007 is forged document. This contention cannot be accepted at this stage as the complainant has produced that document and he is relying on contents of that document.

6. The learned counsel for applicants submitted that Sessions Court has granted anticipatory bail in favour of Iqbal and also Sarwar Pasha and on the ground of parity, the present applicants are entitled to get the similar relief. It is unfortunate that these two persons got relief when there are aforesaid circumstances. It will be open to the investigating agency to apply for cancellation of that relief so that thorough investigation is made. It can be said that the persons who are developing the property, virtually deceived the owner of the land and by giving meager amount, they have obtained signatures of the owner on some documents. In such cases, custodial interrogation is must and the entire record needs to be collected by the investigating

agency. Such instances are increasing and wealthy persons are looting poor persons by giving meager amount. This Court holds that it is not possible to use discretionary relief in favour of applicants from Criminal Application Nos. 1367/2017. So, their application stands rejected. Interim relief granted earlier in their favour is vacated.

7. As the applicant from Criminal Application No. 1370/2017 is lady, she is Muslim and as there is possibility that she had no role to play in purchasing the property and also development of the property, this Court holds that protection needs to be given to her. In the result, Criminal Application No. 1370/2017 is allowed. Interim relief granted earlier in favour of applicant from that proceeding is confirmed.

8. The learned counsel for the applicants requested for continuation of interim relief for some time in favour of applicants from Criminal Application No. 1367/2017 . It is refused in view of the aforesaid circumstances.

**[ T.V. NALAWADE, J. ]**

SSC/