

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1 CRIMINAL APPLICATION NO. 1969 OF 2015

ASHOK BAJIRAO AHER
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

Shri. Vishal A. Bagdiya, Advocate, for applicant.

Shri. S.D. Ghayal, Additional Public Prosecutor, for
respondent No.1.

Shri. S.M. Godsay, Advocate, for respondent No.2 to 7.

Coram: T.V. NALAWADE, J.

Date: 20 March 2017

ORDER:

1) The application is filed for cancellation of anticipatory bail granted to the respondent Nos.2 to 7 by the Sessions Court Parbhani in Crime No.289 of 2014 registered for offences punishable under sections 120B, 406, 418, 419, 420, 467, 468, 471 etc. of the Indian Penal Code. In the applications which were registered as Criminal Misc Application Nos.938/2014 and 927/2014 the relief is granted by the Sessions Court. It is the contention of the complainant that on merits such relief could not have been granted and custodial interrogation of the

accused is must. Contention of the complainant is that investigation could not make progress as the relief of anticipatory bail is granted in favour of the respondents. Both the sides are heard.

2) The applicant is the real brother of respondent No.2 Shivaji. Respondent No.3 is the son of respondent Nos.2 and 4 and both, respondent Nos.2 and 3 are Advocates. Respondent No.4 is wife of respondent No.2. Respondent Nos.5 to 7 were working with respondent No.2. Respondent No.2 was doing the work of drafting and submitting documents for registration before the Sub Registrar and for that work respondent Nos.5 to 7 were working for him.

3) The accused, who are respondents in the present matter are represented by the same Advocate in the present matter. There is allegation against the then Sub Registrar also from the office of the Registrar appointed under the Indian Registration Act that he had joined hands with accused Nos.2 to 6 for creation of false documents but that officer is not before this Court.

4) Present applicant, original complainant is retired Principal. He resides with wife and son at Vasmat Road, Parbhani. It is the case of the complainant Ashok that some litigation of revenue and civil nature in respect of his property situated at Ambad, District Jalna was going on. As accused Shivaji is an Advocate, the complainant gave power of attorney to attend and conduct that litigation. It is the contention of the complainant that due to ill-health and old age he was not in a position to attend offices and Court and so general power of attorney was given to Shivaji on 23 April 2012. It is contended that the power of attorney was given only in respect of the property situated at Ambad, District Jalna. It is contended that certified copy or copy of the power of attorney was not supplied to him by Shivaji by saying that it was not possible to get the certified copy immediately.

5) It is the case of the complainant that he was in Aurangabad for heart treatment in August and then he realized that the house tax of the house situated in Parbhani was being paid by accused Rakshitkumar, son of Shivaji. It is the case of the complainant that he and his

son collected copy of the property card and he realized that the house property was shown to be sold by Shivaji to accused Rakshitkumar. It is contended that when he obtained certified copy of the sale deed he realized that a false general power of attorney dated 23-4-2012 was prepared by Shivaji and the other properties like house property and agricultural land from Nandgaon, Parbhani were included in the general power of attorney and by misusing the aforesaid document, Shivaji had executed sale deeds of the house property in favour of his son and the agricultural land in favour of his wife. It is the case of the complainant that he had not given power of attorney in respect of these properties to Shivaji but Shivaji changed the pages of the general power of attorney before scanning of the document in the office of the Sub Registrar by joining hands with the Sub Registrar and created false general power of attorney in respect of the properties which are shown to be sold to son and wife by Shivaji. It is the contention of the complainant that this way he was cheated by the accused and wrongful loss is caused to him. It is the case of the complainant that the value of this property was more than Rs.2.70 crore.

6) It is the case of the complainant that he had taken loan of Rs.45 lakh on the house property from bank and Shivaji had signed on the mortgage document as witness and so it cannot be said that Shivaji had no knowledge about the loan of Rs.45 lakh taken by the complainant by mortgaging the house property. It is contended that by using the old property card on which mortgage of the property was not shown, Shivaji executed the sale deed of the house property. It is contended that the complainant had one-half share in the agricultural land from Nandgaon admeasuring 3 hectares 52 R and the property was standing in his name as he is elder. It is contended that Shivaji used forged record and showed that the entire share of the complainant is sold to the wife. It is the case of the complainant that he did not realize the mischief committed by Shivaji as mutation was not effected immediately on the basis of sale transactions. It is contended that respondent Nos.5 and 6 signed on the document like general power of attorney as witnesses and respondent No.7 had acted as scribe and so they have played active role in the offence.

7) The orders made by the Judge of the Sessions Court show that the complainant had no information about filing of the anticipatory bail proceedings. He was not present there when the aforesaid proceedings were decided. The learned Judge of the Sessions Court has given the relief of anticipatory bail by mentioning the circumstance that the property from Parbhani is not only on page No.4 of the General Power of Attorney but also on pages 5 and 6 and so there is no possibility of fabrication of the document. These observations are not at all correct. Further, there are circumstances like in the sale deed of the house dated 8-8-2012 the value of the property is shown to be Rs.33 lakh. There is mention that the property was not mortgaged and there was no charge on it. There is mention that the purchaser had already paid entire consideration to the complainant. Admittedly there is virtually no record with the respondents to show that amount of Rs.33 lakh was paid to the complainant by them. Similarly there is no record of payment of Rs.4.5 lakh which is shown as consideration in the sale deed dated 30-6-2012 in respect of agricultural land from Nandgaon. It cannot be disputed that Shivaji had signed

as witness on the mortgage document of the house when the loan was taken on this house by the complainant. There is copy of property card to that effect and there is also copy of mortgage document in support of this allegation.

8) The copy of the general power of attorney produced on record shows that on internal page No.4 one paragraph in Deonagari script has different font than the font of other paragraphs. The main purpose of this document was to give authority to Shivaji to attend and conduct litigation which was going on in respect of the property situated at Ambad, District Jalna. It can be said that as the mechanical process was used for fabrication, the expert will not be in a position to give definite opinion as to when and how the change was made but the other circumstances which are already quoted can be considered in the case like the present one. There was no litigation in respect of the property situated in Parbhani district and if the complainant wanted to give the property to the son and wife of Shivaji, he could have done by executing sale deed or gift deed in their favour.

9) Copy of complaint given by one witness dated 16-8-2016 is produced and it shows that he made allegation against the investigating officer that his statement was recorded under threat that he would also be impleaded. He had acted as witness on the disputed document and he has supported the case of the complainant.

10) The record shows that attempt was made by the respondents to get relief of quashing of the F.I.R. but that proceeding was withdrawn by them. They did not get such relief. There is also record to show that the complainant has filed suit to challenge the aforesaid transactions and in that suit relief of temporary injunction is granted in his favour. His possession over the suit house is protected and the accused are prevented from alienating both the aforesaid house and agricultural land.

11) Learned counsel for the respondents placed reliance on a case reported as **AIR 1984 SC 372 (Bhagirathsinh Judeja v. State of Gujarat)**. He submitted that there is no allegation against the respondents that

they committed breach of conditions of the anticipatory bail and so the order cannot be cancelled. This submission is not at all acceptable. In the case reported as **(2001) 6 SCC 338 (Puran v. Rambilas)** the Apex Court has made it clear that if the Sessions Court has committed error in giving relief of bail or anticipatory bail and that has happened due to circumstances like ignorance of material or when the order itself is perverse and it could not have been given in heinous crime and if there was no reason for such orders, such order will be against the provisions of law and in the interest of justice the Court like High Court can cancel such order. Thus, it cannot be said that only when there is breach of conditions of bail or anticipatory bail, the order can be cancelled. In the present case, the learned Judge of the Sessions Court has committed serious error in giving relief. The respondents, main accused, who are Advocates, got the relief. They have virtually grabbed the property of the complainant by creating false record and there is support of the aforesaid circumstances to the allegations made against them. It cannot be said that false allegations are made against them. It can be said that when there is such order

progress cannot be made in the investigation. Police need to find out the truth and that can be done only after custodial interrogation.

12) In the result, the application is allowed. The order made made by the Sessions Court granting relief of anticipatory bail in favour of the respondents are hereby cancelled. The protection which was given by the Sessions Court is continued for 15 days from today.

Sd/-
(T.V. NALAWADE, J.)

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