

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.67 OF 2017**

Smt.Vasanti Maruti Mali

... Applicant

Vs.

The State of Maharashtra

.. Respondent

**with
ANTICIPATORY BAIL APPLICATION NO.132 OF 2017**

Smt.Poonam Mahadev Dandile

... Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr.Aniket U. Nikam for applicant in ABA/67/2017

Mr.Aniket U. Nikam i/b Mr.C.S. Dambre for Applicant in ABA/132/2017

Mr.S.K. Shinde, Spl. PP with Mr.S.S. Hulke, APP, for State in ABA/67/2017

Mr.Deepak Thakery, APP, for State in ABA/132/2017

Mr.Prabhakar G., Dy.S.P., ACB, Nashik - present

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 31, 2017

P.C. :

1. The applicants/accused are prosecuted for the offences punishable under sections 13(1)(D) r/w 13(2) of the Prevention of Corruption Act and under sections 167, 109, 420, 120B of the Indian Penal Code in C.R. No.II-1 of 2017, Nandgaon police

station, Nandgaon, Nashik. Police inspector Hemantkumar Sahebrao Bhamare, working in the Anti-Corruption Bureau, Nashik is the complainant. As per the case of the prosecution, the government servants holding posts of Talathi, Circle Officer, Tehsildar in connivance with the private persons, have committed the offences under the Prevention of Corruption Act and Indian Penal Code cheated the government thereby causing revenue loss of Rs.3,85,40,288/-. In this case, total 23 persons are made accused. Accused Nos.1 to 10 are the public servants and accused Nos.11 to 23 are the private parties who purchased the unalienable lands. The lands are within the jurisdiction of the Nandgaon police station, wherein the absconding accused No.1 Sunil Mahajan was working as Tehsildar during the period from 2012 to 2015. As per the government policy, the lands are classified in Class I and Class II. Class II lands include Inam / Watan lands and the others are unalienable lands. The lands falling under class I are transferable without permission of any authority. However, for all the lands falling under class II, permission of the government was necessary by virtue of G.R. Dated 8.9.1983 and in order to obtain that permission, either the vendor or purchaser are required to pay 50% of the amount of

market rate of that land towards Nazrana. If in the absence of payment of Nazrana and permission, the land is purchased or transferred, then, it was in violation of the Government rules. Thereafter, the government issued one G.R. Dated 9.7.2002 wherein all the Watan/Inam lands except Mahar Watan were made transferable without permission of the Collector and without payment of Nazrana. However, the permission and payment of Nazrana was necessary for the other class of land i.e., unalienable lands falling in class II. Tehsildar accused No.1 Sudam Mahajan deliberately misinterpreted the said circular of 2002 and though he had knowledge about the restriction in respect of the transfer/ purchase or sale of unalienable land in class II, deliberately allowed the transfer of such lands without permission and without payment of Nazrana. Thereafter, when such instances of transfers were pointed out by the higher authorities, the Additional Collector on 17.1.2015 explaining the earlier G.R. of 2002 that the restriction exists in respect of unalienable lands falling in class II.

2. It is the case of the prosecution that in all, 51 transactions took place during the entire tenure, out of which 29 have taken place prior to 17.1.2015 and thereafter 33 transactions took place

even though the policy was again made clear on 17.1.2015. Thus, the Vendors or Purchasers did not obtain permission of the government and did not pay 50% of the Nazrana of the market rate of the respective lands and had wrongfully gained, thereby causing wrongful loss to the State of revenue of Rs.3,85,40,288/-. After initiation of investigation, some of the accused have filed Anticipatory Bail Applications as follows:

ABA No.	Name of the applicant	Post	Period
87/2017	Ashok Khanderao Aher	Circle Officer	4.6.2012 to 28.7.2014
67/2017	Vasanti Maruti Mali	SDO	6.6.2014 to
78/2017	Shivaji Tatyaba Sanap	Private person	
91/2017	Vijay Pandharinath Sonawane	Talathi	10.6.2010 to 11.8.2014
95/2017	Maniben Jayantibhai Patel	Private person	
102/2017	Walmik Baburao Bodke	Talathi	5.6.2009 to 31.5.2015 (retired)
107/2017	Ashok Sadu Shilawat	Circle Officer	4.6.2012 to 18.5.2012
132/2017	Poonam Mahadev Dandile	Tehsildar	June to October, 2015
135/2017	Popatbhai Lalubhai Patel	Private person	
143/2017	Prashant Shivaji Sanap & Ors.	Private person	
160/2017	Umesh Piraji Gaikwad	Talathi	8.4.2015 to 18.4.2015

3. The present applicants/accused, amongst others, were made accused. Hence, these applications for pre-arrest bail.

4. Both the applications are decided together by this common order as the offence arises out of the same transactions.

5. The learned Counsel for the applicants/accused submitted that Vasanti Mali worked as Sub-Divisional Officer (SDO) at the relevant time. However, the prosecution has made two grievances against the S.D.O. Vasanti Mali. One that she did not take action in revision in respect of two mutation entries i.e., 372 and 373 and secondly, she did not register FIR against the vendors as directed by the Additional Collector, Mr.Pawar. The learned Counsel for the applicants/accused has submitted that pursuant to the show-cause notice, Mr.Pawar cancelled the mutation entries against which both the applicants/accused have filed appeals which are pending before the Divisional Commissioner till today.

6. The learned Counsel submitted that she did not register the FIR as directed by the Additional Collector. The learned Counsel further pointed out that in the revision application in respect of the two mutation entries 372 and 373, the S.D.O. had issued notices immediately and thereafter the Additional Collector himself had cancelled those mutations and, therefore, the files were closed. He further submitted that the FIR was not registered because the letter was not written directly to the S.D.O. i.e., the applicant/accused but it was addressed to Police Inspector and

moreover, there was confusion in the minds of officers as to exactly against whom the FIR was to be given.

7. The learned Counsel appearing for applicant/accused Poonam Dandile, who worked as Tehsildar at Nandgaon, has submitted she took charge on 12.6.2015 of Nandgaon after principal accused Sudam Mahajan. She worked only for four months. The main charge against this applicant/accused is that the Additional Collector Mr.Pawar has directed her to register offence which was not obeyed by her. The learned Counsel further submitted that she has sent one letter pursuant to the letter dated 31.7.2015 sent by the Additional Collector Mr.Pawar, directing her to register offence for the loss of revenue to the Government and it was pointed out that in reply, Poonam Dandile wrote letter to the Collector on 4.8.2015 and sought directions as to against whom and how the action is to be taken and thereafter the Collector, Nasik wrote letter to the Divisional Commissioner, Nasik on 17.10.2016 and awaited for the directions. The learned Counsel submitted that the applicants/accused are innocent.

8. Learned Prosecutors while opposing these applications have submitted that these applicants/accused were holding higher

positions like S.D.O. and Tehsildar, who ought to have taken action of booking of the culprits, however, they failed to do so. This is a deliberate omission on their part and, therefore, their custody is required for interrogation.

9. Perused the documents and so also the correspondence between the officers and the higher officers in respect of execution of orders of registering offence against wrong doers. The letter was sent to the Divisional Commissioner and these officers were waiting for his direction. Considering these submissions and the documents and the evidence, *prima facie*, I am of the view that the applicants/accused deserve protection under section 438 of the Code of Criminal Procedure. Hence, the applications are granted on the following terms:

- a) 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;
- b) The applicants-accused shall cooperate with the Investigating Officer and attend the concerned police station

on every Monday between 11am to 1//pm till filing of chargesheet.

c) The applicants-accused shall not tamper with the evidence or pressurise the complainant;

d) The applicants-accused shall not indulge into any criminal activity;

e) The applicants-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.

f) 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.

10. Both the Anticipatory Bail Applications are disposed of on the above terms.

(MRIDULA BHATKAR, J.)