

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.87 OF 2017

Shri Ashok Khanderao Aher ... Applicant

Vs.

The State of Maharashtra .. Respondent

with

ANTICIPATORY BAIL APPLICATION NO.107 OF 2017

Shri Ashok Sadu Shilawat ... Applicant

Vs.

The State of Maharashtra .. Respondent

Mr.Sagar V. Kasar for the Applicant in ABA/87/2017

Mr.Niranjan Mundargi i/b Vaibhav Gaikwad for the Applicant in
ABA/107/2017

Mr.S.K. Shinde, Special Public Prosecutor with Mr.S.S. Hulke,
APP, for Respondent – State in both ABAs

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
107/2017	Ashok Sadu Shilawat	Circle Officer	4.6.2012 to 18.5.2012
87/2017	Ashok Khanderao Aher	Circle Officer	4.6.2012 to 28.7.2014
67/2017	Vasanti Maruti Mali	SDO	6.6.2014 to
132/2017	Poonam Mahadev Dandile	Tehsildar	June to October, 2015
102/2017	Walmik Baburao Bodke	Talathi	5.6.2009 to 31.5.2015 (retired)
91/2017	Vijay Pandharinath Sonawane	Talathi	10.6.2010 to 11.8.2014
160/2017	Umesh Piraji Gaikwad	Talathi	8.4.2015 to 18.4.2015
95/2017	Maniben Jayantibhai Patel	Private person	
78/2017	Shivaji Tatyaba Sanap	Private person	
135/2017	Popatbhai Lalubhai Patel	Private person	
143/2017	Prashant Shivaji Sanap & Ors.	Private person	

3. The present applicants/accused Ashok Aher and Ashok Shilawat, both Circle Officers, and 21 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. Both the applicants/accused worked as Circle Officers at Nandgaon, Nasik. Ashok Aher worked as Circle Officer from June, 2012 till July, 2014. Ashok Shilawat worked as Circle Officer from 4.6.2012 to 18.5.2012. Both the officers have confirmed the mutation entries made by Talathi. The learned Counsel for the applicants/accused have submitted that the applicants/accused are innocent and have not committed any offence. They are not supposed to change the mutation entries once made by Talathi. They have not committed any offence under the Prevention of Corruption Act muchless the offense of cheating under section 420 and us/ 120B of the Indian Penal Code. It is further argued by the learned Counsel for the applicant/accused Ashok Shilawat that at the time of confirming the entries of Talathi, Ashok Shilawat has specifically mentioned that he maintained the comment made by Talathi in the entry and thus, he maintained that the lands were unalienable and therefore, he is to be granted pre-arrest bail.

6. The learned Counsel for the applicant/accused Ashok Aher

has submitted that whatever entries were made by the applicant/accused Ashok Aher, were prior to January, 2015 when the Collector had not clarified the Circular of 2002. They have submitted that the custody of the applicant/accused is not required as both of them have attended the police station.

7. Both the learned Prosecutors have opposed the application and submitted that the applicants/accused Ashok Aher has confirmed 12 entries and applicant/accused Ashok Shilawat has confirmed 13 entries. They submitted that they are still investigating the matter and they want to unearth the roots of the crime and certain facts. It is further argued that Ashok Aher has criminal antecedents. He is accused in a trap case in C.R. No.3025 of 2015 registered at Nandgaon police station, under sections 13(1)(D) and 13(2) of the Prevention of Corruption Act, which is still pending. It is further submitted that all the 13 entries made by Ashok Shilawat are all post-January, 2015 entries when the Collector has interpreted the G.R. Of 2002 and their custody is required.

8. Perused the FIR, the papers of mutation entries placed before me. Considered the submissions of both the learned

Counsel for the applicants/accused as also the learned Prosecutors. The applicants/accused were working as Circle Officers. A post of Circle Officer is above Talathi and he works under Tehsildar. Thus, the Circle Officer is supposed to supervise the work done by Talathi. After going through the papers, I find that the government by G.R. dated 9.7.2002, has taken out Inam/Watan lands out of the restriction of taking permission of the government and payment of Nazrana @ 50% of the market rate at the time of transfer. However, for class II lands which fall in the category of unalienated lands, the said restriction continued even after 2002. If it is unalienated land, then, at the time of transfer, the permission of the government and payment of Nazrana @ 50% of market rate is necessary. During the tenure of Ashok Aher, 12 transactions in violation of the rule took place from July, 2012 to July, 2014. On 17.1.2015, when the government came across such transactions and also realised that the revenue officers have allowed the transfers of unalienated lands without fulfilling the condition precedent of permission and Nazrana, the Additional Collector issued explanatory letter on 17.7.2015. It is an undisputed fact that Talathi and Circle Officer are supposed to be the custodian of the revenue records. As per Rule 11 and 12 of the

Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971, as soon as the registered sale deed is produced, Talathi is supposed to make an entry accordingly in the Mutation Register. When Talathi has mentioned that it is an unalienated land, then, as soon as the fact is noticed by the Circle Officer, it is the duty of the Circle Officer to point out this position to the higher officer and correct the entry. In the case of Ashok Aher, though proceedings have taken place prior to 17.1.2015, before issuance of the explanatory letter by the Additional Collector, the act of omission on the part of the applicants/accused, at this stage, *prima facie*, cannot be considered as an innocent error. The prosecution has pointed out that the applicant/accused Ashok Aher is prosecuted in a trap case for the offence under section 13(1)(D) r/w section 13(2) of the Prevention of Corruption Act in C.R. No.3025 of 2015 registered with the Nandgaon police station, Nashik. This offence includes moral turpitude and this is a second offence against the applicant/accused Ashok Aher and hence he cannot be protected with pre-arrest bail.

9. In the case of applicant/accused Ashok Shilawat, it is

significant to note that though he worked as a Circle Officer from 2012 to 2015 at Nandgaon and 13 transactions took place post 17.1.2015. This officer was not new but an experienced one working at that place nearly for 2½ years. He has written in Marathi that the entries of the mutation are allowed by maintaining the comment made by Talathi. This prima facie shows that the applicant/accused Ashok Shilawat had noted that the lands that the lands which were transferred were falling in the category of class II unalienated lands. Yet, he did not take objection and allowed the transfers to take place.

10. Under such circumstances, such omission prima facie appears to be deliberate and illegal and hence, at this stage, I am not inclined to grant pre-arrest bail to applicant/accused Ashok Shilawat.

11. Accordingly, both the Anticipatory Bail Applications are rejected.

12. Learned Counsel for both the applicants/accused have submitted that the State has made statement in the beginning that the police would not take coercive action against the

applicants/accused till final hearing of these applications, which may be continued for three weeks as they want to challenge this order before the honourable Supreme Court. Learned Prosecutor has opposed this oral prayer. However, in the circumstances of the case, the prayer made by the learned Counsel for both the applicants/accused is allowed. The protection is continued to both the applicants/accused upto 22.2.2017.

13. Anticipatory Bail Applications are disposed of accordingly.

(MRIDULA BHATKAR, J.)