

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

ANTICIPATORY BAIL APPLICATION NO.78 OF 2017

Shivaji Tatyaba Sanap	... Applicant
Vs.	
The State of Maharashtra	.. Respondent

with

ANTICIPATORY BAIL APPLICATION NO.95 OF 2017

Shri Maniben Jayantibhai Patel	... Applicant
Vs.	
The State of Maharashtra	.. Respondent

with

ANTICIPATORY BAIL APPLICATION NO.135 OF 2017

Shri Popatbhai Lalubhai Patel	... Applicant
Vs.	
The State of Maharashtra	.. Respondent

with

ANTICIPATORY BAIL APPLICATION NO.143 OF 2017

Shri Prashant Shivaji Sanap & Ors.	... Applicants
Vs.	
The State of Maharashtra	.. Respondent

Mr.Shyam Dewani with Pushkraj Deshpande with Ms.Sakshi Gard
i/b Dewani & Asso. In ABA/78/2017 and 143/2017

Mr.Niranjan Mundargi i/b Prasanna Bhangale the Applicant in
ABA/95/2017

Ms.Rukmini Khairnar for Applicant in ABA/135/2017

Mr.S.K. Shinde, Special Public Prosecutor with Mr.S.S. Hulke,
APP, for Respondent – State in ABA Nos.78/2017, 95/2017

Mr.S.K. Shinde, Special Public Prosecutor with Ms.S.S. Kaushik, APP, for Respondent – State in ABA No.143/2017

Mr.Deepak Thakery, APP, for State in ABA No.135/2017

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, who are private persons, amongst others, were made accused. Hence, these applications for pre-arrest bail. All these applications are decided together by this common order as the offence arises out of the same transactions.

4. The learned Counsel for all the applicants/accused have submitted that the applicants/accused are innocent. They are private persons and purchasers of the lands. Most of them have purchased the property prior to 17.1.2015. It is pointed out that applicant/accused Maniben Jayantibhai Patel had entered into a registered sale deed on 12.11.2013. applicant/accused Shivaji Sanap had entered into an agreement of sale on 13.2.2014 of the land and other 9 applicants/accused in Anticipatory Bail Application No.143 of 2017 have entered into agreements prior to 17.1.2015

except three registered sale deeds i.e., two of Prashant Sanap, one by Jayantibhai Patel and one by Bharati Shah. It is submitted by the learned Counsel for these purchasers that they have executed joint affidavits alongwith their respective vendors that the land falls in class II category where permission is not required and if permission is required and if it is required to pay Nazrana, then the purchasers would pay at 50% of the market rate to the government. The learned Counsel for all the applicants/accused have submitted that the applicants/accused are ready to pay Nazrana as on today @ 50% of the market rate.

5. It is further submitted that these applicants/accused have received show-cause notices in the month of May, 2015 and all of them, except Popatbhai Lalubhai Patel, applicant/accused in ABA No.135 of 2017, have filed appeals and they are prosecuting before the Divisional Commissioner challenging the show-cause notice questioning the transfer of the land without permission and without payment of Nazrana. The learned Counsel submitted that their appeals are pending before the Divisional Commissioner.

6. The learned Counsel for Maniben Patel has submitted that there is another angle to this case which is also to be considered

in this case. He submitted that on 15.5.2015, the erstwhile Additional Collector Mr.Pawar issued show-cause notice in respect of the transactions wherein Rs.5 lakhs was charged as fine. When the husband of Maniben appeared before Mr.Pawar, at that time, the Additional Collector Mr.Pawar demanded bribe of Rs.50 lakhs and after negotiations, it was settled upto Rs.35 lakhs to take back the show-cause notice. The husband of Maniben who is also one of the applicants/accused in ABA No.143 of 2017 filed complaint with the ACB under the Prevention of Corruption Act. A trap was laid and the applicant/accused was taken in custody for two days. Thereafter, he was suspended.

7. It is further submitted by the learned Counsel for the applicants/accused that the applicants/accused have not committed any offence under the Prevention of Corruption Act or under the Indian Penal Code muchless the offence under sections 420 r/w section 120B of the Indian Penal Code.

8. Learned Prosecutors have further submitted while opposing the Applications that the applicants/accused were aware that their respective lands are from class II category where permission of the authorities is required and at the time of the transfer, Nazrana @

50% of the market rate is to be paid to the government. However, the applicants/accused have violated these conditions of transfer. It is submitted that the transfer is void and pursuant to the respective registered sale deeds, the government has got mutation entries cancelled. The learned Prosecutors further submitted that these applicants/accused are direct beneficiaries and have caused wrongful loss to the government and got wrongful gain as they have not paid Nazrana to the government. Their applications be, therefore, rejected.

9. Perused the FIR, the sale deeds and also the affidavits given by all the applicants. Considered the submissions of the learned Counsel for the applicants/accused and also the learned Public Prosecutors. There is *prima facie* evidence that the lands under the transfer or sale are falling in class II category. As per the G.R. of 2002, some lands falling in the category of Inam and Watan lands, were taken out from the restriction of seeking permission and payment of Nazrana. However, the lands which are falling under the category of unalienated lands are restricted lands where the permission of the authority and payment of 50% market price is a condition precedent for such transfer. It appears *prima*

facie that these were falling in the second category as they are unalienable lands and, therefore, as per the G.R., there was restriction. Apparently, the condition of payment of 50% market rate and not obtaining permission is violated, *prima facie*, and, therefore, the government has rightly taken the action and the government may take decision of filing civil Suits for declaration in respect of those registered sale deeds.

10. These applications are moved for pre-arrest bail. Considered the affidavits filed by the applicants/accused. In those affidavits, the applicants/accused have undertaken that they would pay Nazrana to the government if it is held that permission is required and they are unalienable lands. Statements are made before the Court that all the applicants/accused are ready to pay Nazrana. Moreover, their respective appeals challenging the show-cause notices and the decision of the Additional Collector cancelling the mutation entries are pending before the Divisional Commissioner. Under such circumstances, I am of the view that custodial interrogation of the applicants/accused is not required and hence, these 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) All the applicants-accused shall cooperate with the Investigating Officer.
- c) The applicants/accused Maniben Patel, Smt.Ranjan Shivalal Makani and Smt.Bharati Mahesh Shah shall attend the concerned police station only on three dates i.e., 6th February, 13th February and 20th February, 2017 between 11am to 1pm and all the other applicants/accused shall attend the concerned police station on every Monday between 6pm to 8pm till filing of chargesheet;
- d) The applicants-accused shall not tamper with the evidence or pressurise the complainant;
- e) The applicants-accused shall not indulge into any criminal activity;

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

g) 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. Anticipatory Bail Applications are disposed of on the above terms.

(MRIDULA BHATKAR, J.)