

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

ANTICIPATORY BAIL APPLICATION NO.91 OF 2017

Shir Vijay Pandharinath Sonwane	... Applicant
Vs.	
The State of Maharashtra	.. Respondent

with

ANTICIPATORY BAIL APPLICATION NO.102 OF 2017

Shri Walmik Baburao Bodke	... Applicant
Vs.	
The State of Maharashtra	.. Respondent

and

ANTICIPATORY BAIL APPLICATION NO.160 OF 2017

Shri Umesh Piraji Gaikwad	... Applicant
Vs.	
The State of Maharashtra	.. Respondent

Ms.P.U. Badadare for Applicant in ABA/91/2017

Mr.H.E. Palwe for Applicant in ABA/102/2017

Mr.Anilkumar Patil for Applicant in ABA/160/2017

Mr.S.K. Shinde, Special Public Prosecutor with Mr.S.S. Hulke,
APP, for Respondent – State in ABA No.91/2017

Mr.S.K. Shinde, Special Public Prosecutor with Ms.S.S. Kaushik,
APP, for Respondent – State in ABA No.102/2017

Mr.Deepak Thakery, APP, for State in ABA No.160/2017

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

4. Learned Counsel appearing for the applicant/accused Walmik Baburao Bodke submitted that he was working as Talathi at Ganesh Nagar, Tal.Nandgaon between the year 2008 and 2013. Now, he is retired from service. He made 5 entries in the record of rights, after registered sale deeds were presented. Applicant/accused Vijay Sonawane in ABA/91/2017 was working as Talathi during 2013 and 2014 and had made 5 entries of mutation in the record of rights on the basis of registered sale deeds. So also, applicant/accused Umesh Gaikwad was an In-charge Talathi of Nandgaon only for a period from 8.4.2015 to 17.4.2015 and he had made one mutation entry. It was submitted by the learned Counsel for the applicant/accused Umesh Gaikwad that Umesh Gaikwad was never appointed as Talathi but a Junior Clerk and during a short period of 7 days, he was made In-charge

Talathi. At that time, when the registered sale deed was produced, he made entry in the record of rights. The learned Counsel further submitted that though an entry was made after 7.1.2015, he has specifically mentioned in the said entry that the land is unalienated land and permission was not taken.

5. Similarly, the learned Counsel for other two applicants/accused namely Walmik Bodke and Vijay Sonawane relied on Rules 11 and 12 of the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules 1971. Both the learned Counsel submitted that as per these rules, the Talathi is bound to make entries in the register of mutation as soon as there is an intimation of the registration of the sale or purchase.

6. 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.

7. Learned Special Public Prosecutor and the Public Prosecutors have opposed the applications. They argued that the Talathi is a custodian of the record and under proviso 3 of section 149 of the Maharashtra Land Revenue Code, it was duty of the Talathi to verify the evidence of the order by which the permission is given as is required under the Code in respect of transfer of land. It is argued that these Talathis were duty bound to point out that these lands fall in unalienated land in category II and ought not to have mutated the said entries and they ought to have reported the same to their higher authorities.

8. I have perused the respective mutation entries made by these three Talathis. These entries show that the 3 Talathis have mentioned these lands as unalienated falling in class II. They are supposed to make entry in the register of mutation as per Rules 11 and 12 and also mention their observations in respect of any irregularity or anomaly or about the special circumstance at the time of taking the said entry in the mutation register. There may be some omission on the part of these persons of not indicating this fact to the higher authority, however, these persons have mentioned the type of land. Applicant/accused Umesh Gaikwad

has specifically mentioned that the permission was not taken and therefore though that entry is made after 17.1.2015 and considering his short tenure of doing work as Talathi in charge, so also considering their involvement, I am inclined to allow these applications for pre-arrest bail. Accordingly, the Anticipatory Bail Applications are allowed 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 and shall attend the concerned police station on every Monday between 6pm to 8pm 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 their 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. Anticipatory Bail Applications are disposed of on the above terms.

(MRIDULA BHATKAR, J.)