

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

ANTICIPATORY BAIL APPLICATION NO.234 OF 2017

Shri Jayesh Machhindra Maldude ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.R.N. Gite for the Applicant

Mr.Deepak Thakre, APP, for Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 1, 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/-.

3. The present applicants/accused, a Talathi, was made accused. Hence, this application for pre-arrest bail.

4. Learned Counsel appearing for the applicant/accused relied on the entries made by the applicant/accused wherein he has referred to the earlier G.R. Dated 9.7.2002 and has stated that as per the G.R., no permission and no nazrana is required for the transfer or the sale deed. The learned Counsel has further relied on the order passed by this Court dated 31.1.2017 in Anticipatory Bail Application No.91 of 2017 and other connected Anticipatory Bail Applications wherein most of the co-accused were granted bail.

5. Perused the FIR, the entries made by the applicant/accused when he was working as a Talathi. It shows that he has referred to the earlier G.R. dated 9.7.2002 but he has not referred to the circular of 17.1.2015 explaining the previous G.R. Of 2002. Thus, prima facie, it appears that without taking note of the latter circular and on erroneous interpretation of the earlier G.R., without correct interpretation, three transfers were allowed. On query, it was submitted by the learned Prosecutor, on instructions, that the applicant/accused has attended all the dates at the police station and has cooperated with the investigation.

6. Considering this, I am of the view that the custody of the applicant/accused is not required. Hence, the interim bail granted earlier on 8.2.2017 is hereby confirmed. The applicant/accused is directed to attend the concerned police station on every Saturday between 6 pm to 7 pm for a period of one month or till the filing of chargesheet, whichever is earlier.

7. Anticipatory Bail Application is disposed of accordingly.

(MRIDULA BHATKAR, J.)