

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

ANTICIPATORY BAIL APPLICATION NO.784 OF 2017

Digambar Dnyandeo PatilApplicant

Vs.

State of MaharashtraRespondent

WITH

ANTICIPATORY BAIL APPLICATION NO.803 OF 2017

Sudhir Madhukar NirpharakeApplicant

Vs.

State of Maharashtra & Anr.Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO.1080 OF 2017

Maheboob Dawood ShaikhApplicant

Vs.

State of Maharashtra & Anr.Respondents

Mr. Karan Bhosale i/b. Mr. Arvind D. Aswani for applicant in ABA/784/2017.

Mr. Kuldeep Patil for applicant in ABA/803/2017.

Mr. Ganesh Gole i/b. Mr. Ateet Shirodkar for applicant in ABA/1080/2017.

Mr. A.H.H. Ponda i/b. Mr. S.N. Biradar for Intervenor in all ABA.

Mr. S.R. Agarkar, Additional Public Prosecutor for the respondent.

CORAM : T.V. NALAWADE, J.

DATE : 18th AUGUST, 2017

PC.:

1 All the three applications are filed for relief of anticipatory bail in C.R. No.56 of 2017 registered with Swargate Police Station, Pune for offences punishable under Section 420, 465, 467, 468, 471 read with 34 of Indian Penal Code. The learned counsels for the applicants and learned APP are heard.

2 Papers of investigation were made available. The learned counsels for the applicants have also produced some record and that record is perused by this Court.

3 The complainant Behjaad Marzban Irani is a decedent of one Rashid Irani. The property involved in the present matter, viz., land survey no.697/1 (the disputed property admeasuring 5023 sq. mtrs.) was owned by Rashid Irani. After the death of Rashid, which took place on 7th November, 1970, the property came to his three successors, viz., Dara, Fardun and Khodaram. Dara appointed Marzban Fardun Irani as a successor and administrator of the property. Marzban was also successor of aforesaid Fardun. Dara is dead.

4 There is an allegation in the F.I.R. that one Farokh Gadiyali created false record of declaration in respect of Marzban Fardun Irani. Marzban died on 21st September, 2010 and the declaration dated 25th April, 2010 was shown to be made in favour of Farokh Gadiyali. It is the case of Behjaad Irani, the first informant that as he is the successor of Marzban and as the other administrators are dead, the property of deceased Rashid would go to 15 successors of Rashid. It is contended that the son of Dinshaw Irani had filed a special suit no.134 of 1995 in Pune Court in respect of the Will executed by Rashid and that suit was pending even on the date of F.I.R. It is contended that inspite of all circumstances, false

record was created of declaration of Marzban to show that he had appointed Farokh Gadiyali as administrator. It is contended that the Advocate, who signed for the purpose of identity of the executant, was not known to Marzban and Marzban had never made such declaration. He got compared the signature appearing on the so called declaration with other records of Marzbaan and he realised that false record of declaration was created in favour of Farokh Gadiyali. Farokh Gadiyali executed Sale Deed in respect of area of 5023 sq. mtrs. in favour of Aradhya Developers which is represented by the applicant Digambar Patil in proceeding no.784 of 2017. Allegation is made that this purchaser had joined hands with Farokh Gadiyali in creation of false record and the property was shown to be sold for consideration of Rs.12.56 crores. It is contended that after creating the record of Sale Deed, even entry was made in revenue record and that way by creating false record of transfer of title, the successors of Rashid Irani are deceived.

5 The submissions made by both sides and the record of investigation show that opinion of the expert is obtained and it shows that the so called declaration made by Marzbaan in favour of Gadiyali was not signed by Marzban. Further it needs to be kept in mind that Marzban has left behind heirs, viz., first informant and in ordinary course also he would not have given all the rights in favour of person like Gadiyali, who was not

relative of Marzban and who was not related to the successors of Rashid Irani in any way. The papers of investigation show that declaration is shown to be notarised before one Nirpharake. The record is checked by police and investigating agency has formed opinion that the entry of so called declaration was introduced in the register subsequently to create antedated document.

6 On query made by this Court, learned counsel for the notary, who is applicant in Application No.803 of 2017 produced xerox copy of the register maintained by notary. This register does not show that it was produced before the Principal District Judge, Pune for certification as required by the procedure created by the State Government. Learned counsel for the notary submitted that as the person was identified by one Advocate Mr. Jamdar, the document was notarised. The submissions made show that the said Advocate Jamdar is also made accused in the present matter. Thus, there are serious allegations against notary public and also one Advocate showing that they are involved in the creation of false record.

7 The submissions made show that due to some queries made by this Court, the other Hon'ble Judge in the past, in a suit which was filed by the aforesaid Gadiyali, applicant Digambar Patil filed consent written statement. The suit is filed for cancellation of the Sale Deed. This circumstance, can no way help Digambar Patil and on the contrary, this

circumstance can be used against Digambar Patil. In law, even by such declaration no right could have been created in favour of Gadiyali. It is surprising that only on the basis of so called declaration shown to be made by Marzban, Digambar Patil went for purchase the property for the consideration of more than Rs.12.56 crores. The submissions made show that after starting of the dispute, the cheque was not encashed. All these circumstances are against Gadiyali and also Digambar Patil.

8 The papers of investigation show that applicant in proceeding no.1080 of 2017 is the brain behind the creation of the aforesaid record and transfer of the property. After the arrest of Gadiyali, it transpired that this person was having a copy of the Will executed by Rashid Irani. This copy was used by the persons who created false record. Marzban died on 21st September, 2010 and there is allegation that subsequent to the death of Marzban, the declaration dated 25th April, 2010 was created. There are allegations which are made on the basis of investigation that the so called declaration was actually created in September, 2015. The investigation reveals that Advocate Jamdar, who signed on declaration to identify Marzban, was with applicant in proceeding no.1080 of 2017 and by joining hands with Gadiyali they created false record of giving right to Gadiyali.

9 The aforesaid circumstances show that serious offence is committed by all the three applicants. In these dates when there is a

property having huge value, such false record is created and then by pressurizing the real owners some rights are obtained. In the present matter also steps taken by Gadiyali and Digambar Patil show that when they realised that they are not getting anything due to false record, they created show like filing civil litigation. It is not possible to believe that Digambar Patil was not involved in the aforesaid matter. On the contrary, it can be said that the provisions of Section 120 (b) of Indian Penal Code of conspiracy can be used against all these persons though the crime is not registered under that section.

10 The learned counsel for the applicant - Digambar Patil filed on record additional affidavit of Digambar Patil to show that some directions given by this Court in the past were complied with by him. In that regard, some observations are already made. There was no title with Gadiyali and it can be said that due to steps taken, these persons indirectly admitted that no declaration was made by Marzban in favour of Gadiyali. Learned counsel for the applicant placed reliance on some observations made by Bombay High Court in the case reported as AIR 2011 Bom 119 (***Prakash Alumal Kalandari vs. Jahnavi Prakash Kalandri***). Some observations were made by this Court with regard to entitlement of a party who had filed divorce proceeding by mutual consent to withdraw the consent. The observations were all together in different context. In the present matter,

complainant has not consented to anything and when cognizable and non-bailable offence is committed, there is no question of consideration of such consent also. Once the crime is registered, the matter needs to be investigated by the investigating agency and it needs to be taken to logical conclusion. On this point, learned APP placed some observations made by this Court in the case reported as 2013 All MR (Crim) 3984 at Aurangabad Bench in the matter of (*The State of Maharashtra vs. Esarar Ahmedkha s/o. Osmankha & Anr.*). This Court has considered the factors which need to be considered at the time of consideration of proceedings filed for anticipatory bail. It cannot be disputed that when there is a protection of relief of anticipatory bail, the investigation gets hampered.

11 Therefore, all the three anticipatory bail applications stand rejected. Ad-interim relief stands vacated.

12 Learned counsel for the applicant in Anticipatory Bail Application no.784 of 2017 requested for continuation of the interim relief. It is refused. Other applicants also made similar request, which is also refused.

(T.V. NALAWADE, J.)