

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

ANTICIPATORY BAIL APPLICATION NO. 1085 OF 2017

Hari Kathore Koli & Ors

... Applicants

vs.

The State of Maharashtra

... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1097 OF 2017**

Tushar Chandulal Patel

... Applicant

vs.

The State of Maharashtra

... Respondent

Mr. A. Mundargi, Senior Counsel, i/b Ms. Megha Shahi Bajoria,
for the Applicant in ABA No.1085/2017.

Mr. Kuldeep Patil, i/b Mr Ranjeet Patil, for the Applicant in ABA
No.1097/2017

Mr. A. P. Palkar, A.P.P. for the State/Respondent.

Coram : T. V. NALAWADE, J.

Date : 8th August, 2017

P.C. :

1. Both Applications are filed for anticipatory bail in Crime No. 238 of 2016 registered in Kharghar Police Station, District Raigad for the offences punishable under Sections 467, 471, 420 r/w 34 etc. of Indian Penal Code. Both sides are heard. The

papers of investigation were made available to this Court for perusal.

2. Application No. 1097 of 2017 is filed by one Tushar Chandulal Patel, a purchaser and Application No. 1085 of 2017 is filed by Hari Kahtod Koli and others, who are close relatives like uncles etc. of the first informant.

3. One Parshuram Padu @ Padya Koli has given the report dated 3rd August, 2016. One Kathod Koli was his grandfather. Kathod Koli died in the year 1972. He had four sons who are the Applicants of the other proceedings. The father of informant was also a son of Kathod. Kothod had left behind three daughters namely Raghubai, Gomu and Mathura. Kamlubai the widow was also left by the Kothod and they were his successor.

4. Agricultural land Survey No.104, 166 and 170 were belonging to Kathod and they were situated at Owe Peth, Taluka Panvel, District Raigad. After the death of Kathod the names of his successors were entered in Revenue Record of this land. These lands were acquired by CIDCO and as per the scheme of the Government plot was offered to the heirs of Kathod.

5. Kamlubai died on 18th September, 2004 and father of first informant died on 5th December, 2014. As the informant did not hear anything about the allotment of the piece of land under aforesaid scheme, he visited the office of CIDCO and collected the information. He realised that by producing forged record and by making false representation the plot admeasuring around

700 sq. mts. which was allotted to them was disposed of by the Applicants of the Bail Application No.1085 of 2017 and purchaser Tushar Patel was involved in getting and in creating record as he was interested in getting that plot. As the first informant was sure that his father had not appeared before CIDCO and he had not signed any document and as his grandmother, who was shown as alive in the year 2006, had died in the year 2004 itself, he gave report to police.

6. The statements made and the record show that first agreement was shown to be made with Harish Thakkar in December 2005. Harish Thakkar then entered into agreement with Tushar Patel, the Applicant of Bail Application No. 1097 of 2017 and due to that Tushar Patel got the right to purchase the disputed property.

7. The main contention of original complainant is that false record was created like false notarized document of identity and Raghubai was presented before authority and before Sub-Registrar as Kamlubai and there was impersonification. Similarly in place of Raghubai Gomu Kawale was shown by producing photograph of Gomu Kawale and in place of Gomu Kavale, Shakuntala Koli was used. This was done at the time of making of tripartite agreement, lease document etc.

8. The learned APP submitted that Tushar Patel has signed on the lease document to show that he identified the persons even when there was impersonification. The learned APP submitted that the document executed in favour of Thakkar was

unregistered, but the document executed in favour of Patel is registered document and so Patel needs to be blamed for creation of false record. The submissions made and the record show that the first Memorandum of Understanding ('MOU', for short) was made in favour of Harish Thakkar that it was unregistered and it was made in December 2005. These documents were signed by father of first informant and other successors of Kathod and also of Kamlubai. It can be said that on the basis of the document of MOU, Patel entered into an agreement with the successors of Kathod. It can be said that the agreement must have been made on the basis of mutation made in revenue record after the death of Kathod and the record of agreement was created to show that successors of Kathod were selling the rights. The record also shows that the amount of consideration was paid not only to father of first informant but also to a brother of first informant. The transactions were registered in the office of Sub-Registrar and digital record was created of identification. The photographs of the persons, who were selling the property were taken by Sub-Registrar and they were used in all the documents. It does not leave any scope to say that father of the first informant was not present and his signature was forged. So far as impersonification done in respect of deceased Kamlubai is concerned, it can be said that after the death of Kamlubai, her successors would have got her property. The learned APP submitted that in one award prepared by Special Land Acquisition Officer, one mere legal representative of Kathod was shown who is Devkibai. This record is in respect of other land and not in respect of present

land. The award in respect of acquisition of present land does not show the name of Devkibai. Further the Revenue Record is ordinarily seen by the purchaser. Apparently the purchaser paid entire consideration to the successors of the Kathod. It can be said that the successors of Kathod did some illegal acts like impersonification. After the death of Kamlubai names of other successors of Kathod could have been brought on record. If the transaction is not binding on Devkibai, that is different matter as she is not shown as a party on any document made in the present matter.

9. The aforesaid circumstances create a probability that the purchaser had no information about the things which were being done by successors of Kathod. They were interested in selling the land and they got the consideration. As the father of the first informant signed on the documents, it cannot be said that the first informant is deceived. He did not challenge the said transaction by filing appropriate proceedings. Due to these circumstance, this Court hold that protection needs to be given to the Applicants of both proceedings. In the result both applications are allowed. Interim relief granted in favour of the Applicants is confirmed.

10. Both Anticipatory Bail Applications are to be treated as allowed and disposed of.

[T. V. NALAWADE, J.]