IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1178 OF 2017

Sharad Mansukhlal Mutha .. Applicant
Vs.
State of Maharashtra .. Respondent

ALONG WITH
CRIMINAL APPLICATION NO.713 OF 2017

Ajitkumar Nagesh Deshpande .. Intervenor

In the matter between
Sharad Mansukhlal Mutha .. Applicant
Vs.
State of Maharashtra .. Respondent

Mr.A.P. Mundargi, Senior Counsel i/by Mr.Sarang S. Aradhye for the applicant.
Mr.A.P.Palkar, Additional Public Prosecutor for the respondent.
Mr.Jaydeep D. Mane for the intervenor.

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO.1446 OF 2017

Surendra Shashikant Karnik .. Applicant
Vs.
State of Maharashtra .. Respondent

Mr.Sudhir C. Halli for the applicant.
Mr.A.P.Palkar, Additional Public Prosecutor for the respondent.

CORAM : T.V. NALAWADE, J.
DATE : 21st August 2017

P.C. :

. Both the applications are filed for relief of the anticipatory bail in C.R. No.164 of 2017 registered with P.S. Faujdar, Chawdi Police

Station, Solapur for the offences punishable under Sections 420, 406, 467, 477A, 120B etc. of the Indian Penal Code. The report is given by one Ajitkumar Nagesh Deshpande. Both the sides are heard. Papers of investigation were made available for perusal of this Court.

2. For proper appreciation of allegations made against the applicants in both the proceedings, it is necessary to mention in brief the history of one litigation and then the conduct of the present applicants and other accused persons. This conduct is with regard to the orders obtained from this Court also and with regard to the rights of ex-workers of one mill. First informant is one of such ex-workers.

3. It can be said that aggrieved persons are in thousands. They were working in Solapur Spinning mill, Solapur which was owned by one Murarka. This mill had taken a loan from Bank of Baroda. The Bank of Baroda had filed a Suit bearing No.156 of 1963 in this Court for recovery of Rs.13,56,618.65 against this mill. The proceeding was started by the creditors and also the Government for appointment of Receiver. Liquidation Petition No.84 of 1963 was also pending in this Court. In Liquidation proceedings, in the year 1964, Liquidator came to be appointed. In the suit filed by the Bank of Baroda, consent decree

was passed and the property was given in the hands of the Court Receiver. This property was to be sold by public auction.

4. In addition to the dues towards the creditors like banks, there were dues towards ex-workers of mill of all kinds. In the year 1988, Receiver appointed for execution of consent decree got the custody of the immovable properties of the mill. In meeting of June, 1988 of the concerned parties, the terms of the sale of the properties were settled.

5. The property of the mill was divided into 6 lots by the Receiver. Lot Nos.1 to 6 were described as under:-

The properties of the said mill were divided into 6 lots duly demarcated and identified as under :-

Lot No.1	:	Mill compound property
Lot No.2	:	Motibag property
Lot No.3	:	Agricultural land at Hiraj Road
Lot No.4	:	Agricultural land near Railway track
Lot No.5	:	Darmsi Lane Chawls
Lot No.6	:	Juni Police Line Chawl

6. There were dues towards the employees and for recovery of the dues, they had formed association of the ex-employees and also the heirs of the deceased employees under the name and style as "The Juni Mill Bekar Kamgar Varsdar and Janahi Sangharsh Samiti." This association was registered under the provisions of the Bombay Public Trusts Act.

7. When the aforesaid properties of the mill were put to the public auction and notice was published, the aforesaid association (in short "Sangharsh Samiti") decided to participate in auction sale. There was possibility of joining hands by the parties and others to the proceedings and due to that there was possibility of receiving less amount and that would have affected the rights of the ex-employees. One Mr.Kumar Shankar Karajgi, accused no.1 in the present matter, was the President of the aforesaid Trust. He represented to the ex-employees and the legal heirs that the properties of the mill can be purchased by them and that can be distributed amongst the employees. By making such representation, contribution was collected from the members of the aforesaid association. There were other persons also who were ex-employees.

8. The aforesaid Sangharsh Samiti participated in the bid and it was declared as successful bidder in respect of the properties Lot Nos.1 to 5. Amount of Rs.9.36 crore was to be paid by the purchaser in Suit No.156 of 1963. As per the procedure, Sangharsh Samiti deposited some amount like Rs.83 lakh in the Court. Sangharsh Samiti was expected to deposit the remaining amount before 17th January 1990. This amount could not be deposited by the Sangharsh Samiti and from time to time, extension was obtained from the Court for depositing the amount. Initially, this Court had granted extension subject to payment of interest @1.5% per month (@18% p.a.) on the delayed payment. Chamber summons was moved but ultimately, the Court passed an order of forfeiting the amount of Rs.2.83 crore of the Sangharsh Samiti.

9. The order of forfeiture was also challenged by filing an appeal by Sangharsh Samiti. In the said proceedings, this Court by an order dated 22nd May 1991 granted relief to Sangharsh Samiti and directed to deposit an amount of Rs.8.3 crore before 22nd May 1998.

10. When Sangharsh Samiti was formed to take steps to recover the dues towards the employees from the employer and to

safeguard the interest of the ex-employees, the President of the Sangharsh Samiti did not act for protecting the interest of the ex-employees. He approached the applicant Mr.Mutha and he made many agreements with Mutha. It was possible to approach a bank for loan as the property was of huge value. The action of Sangharsh Samiti of purchasing the property could have protected the interest of the ex-employees in two ways. Firstly, the amount which was to be deposited as purchase price could have been distributed amongst the ex-employees for making payment of their dues and secondly, the property could have been distributed amongst ex-employees and that way they could have got some compensation as they had lost their jobs also. This purpose was defeated by the actions of the President of Association, who joined hands with Mutha.

11. When Sangharsh Samiti participated in the bid and deposited the aforesaid amount, Mutha was not in a picture. In October 1993. Mutha was brought in a picture. The document like Memorandum of Understanding (MOU) was signed by the aforesaid President in favour of Mutha and virtually every right in respect of the properties Lot Nos.1 to 5 was given to Mutha. It needs to be mentioned that association was registered under the Bombay Public Trusts Act and

he could not have disposed of the properties without prior permission of the authority constituted under the Trusts Act. The provisions of the Trusts Act and also the Maharashtra Co-operative Societies Act were given go bye when various documents were signed in favour of Mutha. Main terms and conditions of the first document executed in favour of Mutha on 19th October 1993 read as under :-

(i) Fees of the advocates (mentioned as balance fees) were to be paid by Mutha. No specific amount payable was mentioned in the document.

(ii) It was the responsibility of Mutha to take steps like filing proceedings in High Court to get properties Lot Nos.1 to 5 for the Sangharsh Samiti as Sangharsh Samiti was the successful bidder.

(iii) From the aforesaid properties, Mutha was to give 1000 plots of size 1000 sq.ft. Each to Sangharsh Samiti as the plots were to be given to the members of the Sangharsh Samiti who had given contribution for depositing the amount in Court. This amount was around Rs.2,83 crore.

(iv) Mutha was to deposit in Court the amount in Court Rs.9.36 crore minus 2.8399 crore which is equal to Rs.6.42 crore approximately. In consideration of this payment, Sangharsh Samiti was to give its rights to Mutha with regard to the remaining properties for Lot Nos.1 to 5. This Court is mentioning about the exact area of the property and value of it at proper place but it can be said that for the payment made of Rs.2.83 crore, Sangharsh Samiti was to get 1000 plots and for the remaining amount, Mutha was to get entire remaining properties.

(v) Sangharsh Samiti agreed to see that sale certificates in respect of Lot Nos.1 to 5 are executed in favour of Mutha.

(vi) After giving of 1000 plots to Sangharsh Samiti, Mutha was to develop the entire properties and disposed of the properties in favour of any person and consideration was to be taken by Mutha. For that, Sangharsh Samiti was to give irrevocable power of attorney in favour of Mutha. Similarly, power of attorney was to be given by Mutha to file proper proceedings in High Court and for executing sale deeds in respect of the aforesaid properties.

(vii) Mutha was to bear expenses of the development of properties.

12. The property which Sangharsh Samiti was entitled to get as the properties Lot Nos.1 to 5 is as under :-

(A) Lot No.1 :- Property known as 'Mill compound' is situated about half a mile away from the Solapur Railway Station. Size 65 acres and 23 gunthas (out of total area of 18,56,447 sq.ft. Already agent with Jain Mandir Authority to sell to it 13,267 sq.ft. So remaining 28,43,180 sq.ft.) within the limits of Municipal Corporation. The property which

Survey Nos.8459, 8460, 8661, 8462, 8463/1, 8463/2, 8463/3. Observations in this regard are made at proper place.

(B) Lot No.2 :- Property known as 'Moti Baug.' Survey Nos.7760, 7762, 7763, 7765 and 7766. Total area 15 acres or 6,53,400 sq.ft. Out of it, the property admeasuing 25,664 sq.ft. is allegedly acquired from this lot by Solapur Municipal Corporation. There is record of the Court also showing that in accordance with the said acquisition, price was reduced but there is nothing on record to show that as to who collected the compensation amount. However, as per the record created by Mutha, rights were given to him to collect that amount. Total area Mutha gets was 6,27,736 sq.ft. on two side roads within the limits of the Municipal Corporation.

(C) Lot No.3 :- Property known as ' Agricultural Land on Hiraj Road.' Survey Nos.472, 473-1, 473-2, 473-3, 474, 475, 477 and 478-2. The total area of land admeasures 37 acres and 21 gunthas or approximately 16,34,589 sq.ft. on side Miraj road highway.

(D) Lot No.4 :- Property known as 'Agricultural Land near Railway Lines.' Survey Nos.462 and 480-3. The total area of land admeasures

15 acres and 15 gunthas or approximately 6,69,735 sq.ft. on side Railway lines.

(E) Lot No.5 :- Property known as 'Dharmsy Line Chawls'. Survey No.467. Originally this plot admeasured 7 acres 13 gunthas or approximately 3,19,007 sq.ft. From the agreement, it can be said that 4 acres and 8 gunthas portion was shown to be sold already. Particulars are not mentioned in the agreement but investigation needs to be made to ascertain the particulars of this transaction. Description of the properties from Lot nos.1 to 5 shows that all the properties are situated within the limits of Solapur Municipal Corporation and Mutha sold some portion at the rate which was much higher than the rate which can be calculated from the amount deposited for getting these properties from Court.

13. The aforesaid description shows that all the properties were situated within the limits of Municipal Corporation and many properties were in heart of the City. All properties have road on two sides. Thus Sangharsh Samiti was to get only 1000 plots, each plot having area of 1000 sq.ft. and it gave rights in respect of the entire remaining properties described above in favour of Mutha. This property which was given to Sangharsh Samiti was mainly from Lot No.1 but that was also having

more area than the area which was given to Sangharsh Samiti and that point is also discussed at other place. Thus in one way, Sangharsh Samiti was purchasing the aforesaid 1000 plots from Mutha. The circumstances subsequently mentioned show that the ex-workers were required to pay more for getting the plots.

14. On 19th October 1993, power of attorney was executed by the accused no.1, President of the Trust of Sangharsh Samiti in favour of Mutha. This document was in addition to MOU dated 19th October 1993 and thus all powers and rights were given to Mutha under these documents.

15. The submissions made and record show that Mutha did not deposit the aforesaid amount immediately in the Court. He tried to get more benefits and for that, he took some steps. He took steps in the name of Sangharsh Samiti in this Court to see that the amount which was required to be deposited is reduced by this Court. Till the year 1996, the amount which was to be deposited had crossed the figure of Rs.13 crore. Mutha then deposited the amount of Rs.4 crore in September 1996 and deposited a sum of Rs.3 crore in February 1997. Thus the total amount of Rs.7 crore was deposited by Mutha in the Court.

16. Mutha then filed a proceeding like Review Petition No.1 of 1998. He prayed for relief of waiving interest on delayed payment. He also requested to reduce the amount payable on the ground that some portion of Lot No.2 was acquired by Solapur Municipal Corporation and this property was not available. However, the circumstance and the record show that only Sangharsh Samiti could have got compensation in respect of that portion also. This Court granted both the reliefs by an order dated 22nd April 1998.

17. This Court granted aforesaid reliefs by holding that such order was necessary in the interest of ex-employees of the mill. Thus when under MOU, Mutha was to pay more than Rs.10 crore in the Court, he saw to it that he was required to pay only Rs.7 crore. Due to aforesaid order, no more amount was required to be deposited in the Court for getting sale certificates.

18. In ordinary course, sale certificates ought to have been issued in favour of the Sangharsh Samiti as it was successful bidder. By using aforesaid record like power of attorney and MOU, Mutha played one more mischief. One Co-operative Society by name Uma Society

was created and the control of this society was kept with accused no.1 as he was made the Chairman of the Society. This was done in March 1998. Mutha then obtained agreement from the Society in August 1998. The sale certificates in respect of the property Lot Nos.1 to 5 were issued by this Court on the request made for Sangharsh Samiti by Mutha in favour of Uma Society. They were issued from 29th August 2000 to 4th August 2001. The sale certificate in favour of Uma Society in respect of Lot No.1 is dated 4th August 2001.

19. Copy of the agreement dated 7th August 1998 shown to be executed by Uma Society in favour of Mutha shows that all the rights which were previously given by Sangharsh Samiti in the year 1993 to Mutha were again shown to be given by the Society in faovour of Mutha. As the sale certificates were obtained in the name of Uma Society, such record was created by Mutha. This was also done without following the procedure. It is already observed that Sangharsh Samiti had not obtained permission under Bombay Public Trusts Act for transferring the rights in immovable properties in favour of anybody. In document dated 7th August 1998, Mutha tried to show that Sangharsh Samiti was never interested in purchasing the properties and it was interested only in getting the dues of employees from the employer.

Under the document dated 7th August 1998, Mutha got rights as Sole Selling Agent from the society. At the costs of repetition, it needs to be mentioned that just like Sangharsh Samiti, Society was also under complete control of the accused no.1 and so the document dated 7th August 1998 could be executed in favour of Mutha. This document shows that Mutha was taking decision and he was creating record to see that all the rights are given to him in respect of the properties Lot Nos.1 to 5.

20. The order made in Review Petition by this Court and the aforesaid circumstances like the agreement of 1993 and the other agreements executed in favour of Mutha show that Mutha misled this Court by making submission that the properties were being purchased for ex-employees of the mill. Due to this representation, the Court reduced the amount and it was more than Rs.4 crore. Thus fraud was played on the Court also by Mutha. He had made representation as he was holding power of attorney for Sangharsh Samiti.

21. The document dated 7th August 1998 shows that the rights in respect of 1100 plots which were given to Sangharsh Samiti were subject to approval of Mutha. In accordance with the terms and

conditions of the document dated 7th August 1998, one more document like power of attorney of the same date was created in favour of Mutha by accused no.1.

22. One document dated 24th August 1998 was created and to this document, the parties were like Uma Society, Mutha and K.K.Associates. K.K. Associates is registered Partnership Firm formed by son of the accused no.1 and close relatives of the accused no.1. Subsequently, K.K. Builders, a new concern was formed by the accused no.1 and at that time, the applicant Mr.Karnik from second proceedings openly joined this business. It is already mentioned that Uma Society was already under the control of the accused no.1 as he was the Chairman. K.K. Associates was also created and formed by the accused no.1 by showing members of his family as partners. In schedule, the property Lot No.1 is mentioned in agreement dated 24th August 1998 as schedule 'A.' More properties were shown as schedule 'B' in this agreement. For giving rights in respect of the properties described in schedule 'B' in favour of K.K. Associates, it was shown that K.K. Associates had given amount of Rs.11 lakh to Mutha.

23. From the Lot No.1 property, 1100 plots of 1000 sq.ft. each were to be prepared and the remaining property was to be equally

divided between Mutha and K.K. Associates as per the agreement dated 24th August 1999. That area could have been more than 25 acres. The document shows that K.K. Associates was appointed as Sub-Sole Selling Agent but that become possible due to powers and rights which were given to Mutha in the past. This document shows that for deceiving the ex-employees, Mutha created these document and meager amount of consideration was shown to be given by Mutha for giving rights in respect of the schedule 'B' property to the K.K. Associates. It can be said that this document was executed in favour of K.K. Associates also for the reason that some consideration was to be given to the accused no.1, President of Sangharsh Samiti as he has done everything for Mutha.

24. There is a copy of the agreement dated 30th August 1999 and it is signed by four parties like Uma Society, K.K. Associates, Mutha and Ramesh Kumar Jain and others. In this document, it is shown that out of the amount of Rs.7 crore deposited by Mutha in High Court, the amount of Rs.4 crore was taken from Ramesh Kumar Jain and others. Jain is described as party of first part and to him, the amount to be paid under this document is shown as Rs.12 crore. Thus the amount of Rs.8 crore was to be given to Jain as interest on Rs.4 crore for period of less than 3 years. In this document, there is a mention of another agreement

dated 6th September 1996, but that document is not produced before this Court. That document needs to be traced out and seized. Other circumstances show that Mutha continued to have control over the properties and submission was made that this could happen due to other conditions of document dated 30th August 1999.

25. In document dated 30th August 1999, the properties in respect of which rights were given to the K.K. Associates are described as schedule 'A' property. The same properties are described in agreement dated 24th August 1998 already mentioned. The document dated 30th August 1999 shows that in case of failure of K.K. Associates to give amount of Rs.12 crore, the agreement made by Jain in respect of the property Lot Nos.3 and 4 was to be cancelled by Jain. This condition makes it possible to draw inference that the value of the properties from Lot Nos.3 and 4 was presumed as Rs.12 crore in August 1999.

26. In the document dated 30th August 1999, it is tried to be shown that Mutha and Jain had given to the rights in respect of the properties mentioned in this document for consideration of Rs.12 crore in faovur of K.K. Associates controlled by the accused no.1. In reply

affidavit filed in the proceedings for the State, it is contended that Mutha continued to collect money by selling the portion of the aforesaid properties. Mutha himself has produced a copy of the covering letter dated 22nd January 2002 sent to K.K. Associates with the list of persons from whom Mutha had collected the amount. This amount is shown Rs.24.16 lakh and it is in respect of the property from Lot No.1. Along with covering letter, there is another list describing the portions from the property Lot No.2 and it shows that by selling area of 32,279 sq.ft., Mutha had collected the amount of Rs.3.35 crore. These purchasers were apparently not ex-employees of the mill. The other particulars like date of transactions are not mentioned in the list. These circumstances again show that only false record was created that Mutha had given up the rights in respect of the properties when he was keeping the rights over the properties. Further, the case of Karnik, applicant from second proceedings, needs to be kept in mind and according to him, it is Mutha who had introduced him to the accused no.1 and then he had made agreements with the accused no.1 and new concern like K.K. Builders was created of which Karnik became partner.

27. Papers of investigation show that before sale certificates were issued by this Court, Sangharsh Samiti had sold some portions of

the properties from Lot Nos.1 to 5. On 20th December 1997, some property was sold and this was done after giving rights under the document of the year 1993 made in favour of Mutha. It is contention of the investigating agency that behind this transaction, Mutha was there. Investigation revealed that in transaction dated 20th December 1997, consideration of Rs.2.51 lakh is shown but the amount collected was Rs.85 lakh. Even when there were documents created in favour of Mutha in the year 1993, Mutha did not object to this transaction and this circumstance is sufficient to infer for the present purpose that this transaction was made for Mutha.

28. There is a record of investigation showing that more transactions were made and more properties were disposed of even before issuing of sale certificates by this Court. These circumstances and the aforesaid documents of the agreements show that the accused no.1 joined hands with Mutha to get monetary gain. That was done at the cost of interest of the ex-employees of the mill. The aforesaid record is sufficient to make out prima facie case that the ex-employees of the mill were deceived and the real benefit which the Court intended to give was taken by the accused no.1 Mutha and his associates like applicants. The documents show that the possession was given to Jain

and Mutha and that can be seen from the document dated 24th August 1998. The record is also sufficient to infer for the present purpose that this businessmen created the documents as per their desires and for giving all rights to them which were the rights of ex-employees of the mill. Thus fraud was played with the Court and with the ex-employees by all these persons. There is a mention about the transaction of giving some portions of properties to Jain Temple and that record also needs to be traced. There is no mention about money which was collected for that transaction. Thus more record needs to be traced and taken over and that will become possible only after custodial interrogation of Mutha. They have deceived the poor employees of mill who lost their jobs and who lost their entitlement to collect the arrears of salary, money of gratuity, Provident Fund etc. In view of this circumstances, it is not possible to take lenient view for the persons like Mutha and discretion cannot be given in his favour. Submission made for Mutha that the crime is in respect of the properties Lot No.1 only is not acceptable. The aforesaid record and sale certificates issued by this Court show that the properties Lot Nos.1 to 5 purchased for ex-employees are involved in the present crime. It is already observed that there was no legal transfer of ownership rights which the ex-employees were having in the properties in view of the aforesaid circumstances. In view of these circumstances, the properties, money made by playing fraud by these persons need to be recovered and that needs to be returned to the ex-employees of the mill.

29. So far as the application of the applicant Mr.Karnik in Anticipatory Bail Application No.1446 of 2017 is concerned, it can be said that he came in picture as a man of Mutha. He is admitting that he entered into the partnership business with K.K. Associates. He has contended that he made investment in the property. Some rights were given to him in many properties and there is record to that effect. He admits that he knew the history of litigation. Thus he knew that the properties belonged to the poor ex-employees of mill but he also got benefits by entering into the partnership and by dealing with the properties mentioned above.

30. It is the case of the Karnik that he has paid the amount of Rs.1.63 crore to Mutha for getting the properties. That was done after the last agreement was made by Mutha and Jain on 30th August 1999 and this circumstance also shows that Mutha never gave up the control over the aforesaid properties. It is the case of the Karnik that he was deceived by Mutha and the accused no.1 and against them he gave a report on 23rd

March 2017. This action of Karnik was after thought and this action cannot draw inference that he had not joined hands with Mutha and the accused no.1. Thus the record in respect of the transaction of Karnik also needs to be recovered after tracing it and it is possible after the custodial interrogation of Karnik. This Court holds that the anticipatory bail cannot be given to both the applicants. In the result, both the applications stand rejected. Interim relief granted in favour of them is vacated.

31. When the order was declared, the learned counsel for the applicants requested for continuation of the interim relief for some time as they want to approach the Hon'ble Apex Court. Interim protection is continued for a period of seven days from today. Authenticated copy of the complete order is to be supplied to the counsels for the applicants.

T.V. NALAWADE, J.