

HIGH COURT OF CHHATTISGARH AT BILASPURM.Cr.C.A. No.861 of 2017

Sevakram Marabi S/o Motiram, aged about 40 years, by caste – Gond,
Occupation – Service, R/o Gadelpara, P.S. & Tahsil Baikunthpur,
District Korea (C.G.).

---Applicant

Versus

1. State of Chhattisgarh, Through – Station House Officer, Police Station Baikunthpur, District Korea (C.G.).
2. Keyolapati D/o Late Mangal Sai, caste Panika, R/o Sagarpur at present address Dhauratikra, Police Station Baikunthpur, District Korea (C.G.).

---Respondents

M.Cr.C.A. No.928 of 2017

Azhar Muneer S/o Nazeer Ahmad, aged about 32 years, Occupation
Business, R/o Kachahripara, Baikunthpur, District Koriya (C.G.).

---Applicant

Versus

1. State of Chhattisgarh, Through – Station House Officer, Police Station Baikunthpur, District Koriya (C.G.).
2. Keyolapati D/o Late Mangal Sai, aged about 48 years, R/o Sagarpur, Presently resided at Dhoura Tikra, Police Station Baikunthpur, District Koriya (C.G.).

---Respondents

For applicant in MCRC No. 861/2017	: Shri Awadh Tripathi, Advocate.
For applicant in MCRC No. 928/2017	: Shri Ashok Kumar Shukla, Advocate
For respondent/State	: Shri Adhiraj Surana, Dy.G.A.
For objector	: Shri Jaiprakash Shukla, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/04/2018

1. The present applications has been filed under Section 438 of Cr.P.C.

seeking anticipatory bail to the applicants apprehending there arrest in

connection with Crime No. 256/2017 registered at Police Station Baikunthpur, District Koriya (C.G.) for the offence punishable under Sections 467, 468, 471, 120-B & 420 of I.P.C.

2. The case of prosecution against the present applicants is that the applicant in MCRCA No. 861/2017 namely Sevakram Marabi – a Patwari is said to have connived with the applicant in MCRCA No. 928/2017 namely Azhar Muneer along with the other accused persons in respect of the land which was in the name of Suhano Bai mutated in the name of co-accused – Anandram who in turn is said to have sold the property to the applicant – Azhar Muneer.

3. The facts of the case in brief is that the disputed property originally belonged to one Mangal Sai who had one son and two daughters. The son's name is Amar Sai and the two daughters are Koushalya and Keyolapati. Mangal Sai had died long ago and on his death, the property stood mutated in the name of Amar Sai. Amar Sai also had died somewhere in the year 2008 and since he was issue-less, the property stood mutated in the name of his wife Suhano Bai. Later on, Suhano Bai also died. Thereafter, since the only legal heirs in the family of Mangal Sai were Koushalya and Keyolapati for which an application was moved by these two ladies and have obtained an order of mutation from the Tahsildar on 16/09/2013. However, in between, Anandram who was the son of the brother of Mangal Sai and as such the first cousin of Amar Sai, moved an application before the Tahsildar claiming himself to be the only legal heir available after the death of Suhano Bai and sought for the property to be mutated in his name. The Tahsildar

again ignoring the fact that there is already an order in favour of Koushalya and Keyolapati passed an order on 27/12/2013 in favour of Anandram. It is said that this order of Tahsildar was complied with by the Patwari – Sevakram Marabi – the applicant in MCRCA No. 861/2017 and got the property entered in the name of Anandram who in turn is said to have sold the property to Azhar Muneer – the applicant in MCRCA No.928/2017.

4. The case against the applicants is that the applicants knew well the fact that the order of mutation stood in the name of Koushalya and Keyolapati, yet they have fraudulently got another order of mutation passed in the name of Anandram and got the property entered in his name enabling the sale by Anandram to Azhar Muneer. Initially, a complaint was made which was on investigation closed by the police authorities by submitting a closure report. Lateron, Koushalya and Keyolapati is said to have filed a criminal complaint before the J.M.F.C., Baikunthpur and on the order of J.M.F.C., an F.I.R. was registered. It is this case which has been registered against the applicants in which they are praying for grant of Anticipatory Bail.

5. According to the counsel for the applicant – Sevakram Marabi – a Patwari, it is a case where the entire prosecution seem to have been got done ignorant of the earlier order of mutation having been passed on 16/09/2013 in favour of Koushalya and Keyolapati. It was further contended that, the only role played by the applicant – Sevakram Marabi is that of complying with the order passed by the superior officer which otherwise also he is duty bound to do or else he would have to face the disciplinary action and this act on the part of the Patwari cannot under any circumstances be

said to be an act of fraud or cheating so as to implicate him for an offence under Section 420. According to him, the Patwari for his alleged irregularity, he is being prosecuted by the department in a departmental enquiry and that the statement of the applicant has already been recorded and there is no further need of a custodial interrogation, neither is there any further evidence or materials which is required to be collected from the applicant and he undertakes to provide full assistance and co-operation to the investigating agency and lastly considering the fact that he is a Government employee, his employment would be jeopardized if he is arrested thus prayed for granting the benefit of Anticipatory Bail to the applicant – Sevakram Marabi.

6. So far as the counsel for the applicant in MCRCA No. 928/2017 – Azhar Muneer is concerned, it was contended that the applicant is an innocent person in as much as he was not aware of any such development prior to the purchase of the property from Anandram. According to him, the applicant comes into picture only after the mutation proceedings having been finalized and the property being entered in the name of Anandram. As such, he has not in any manner connected with the alleged fraud or cheating to have been committed with Koushalya and Keyolapati. According to the counsel for the applicant, he is a bonafide purchaser and he was totally unaware of any fraudulent transaction which has occurred in the past. Neither is he remotely connected nor is his name reflected anywhere in the case diary of being involved in the transaction prior to his purchase of the property. He further submits that, so far as the applicant Azhar Muneer is concerned, his case also has been closed by the police authorities after the initial investigation

and it is only on a complaint case filed by the complainant that he has been implicated. According to him, the overall nature of the dispute raised by Koushlya and Keyolapati establishes it to be a pure civil dispute. He further submits that the sale deed executed between Anandram and Azhar Muneer has till date not been questioned before any court of law and the sale deed dated 13/05/2014 between Anandram and Azhar Muneer still holds good and unless the sale deed is struck down by a competent court of law, the transaction entered into has to be presumed to be a legal transaction and thus prayed for granting the benefit of Anticipatory Bail to the applicant.

7. The State counsel as well as the counsel for the objector however opposing the two bail applications submits that perusal of transaction itself would reveal the role played by each of the applicants. According to the State counsel, the applicants have deliberately and with malafied intention got the property mutated in the name of Anandram and the same was lateron sold to Azhar Muneer. They referred to the statement of the complainants who have narrated the fact of the property getting mutated in their name by order dated 16/09/2013 by the Tahsildar. It was further contended that subsequently the Patwari – Sevakram Marabi is said to have taken the order from the complainants and is said to have made certain interpolation on it and got the name of Anandram entered in the Revenue record showing him to be the person who has inherited the property which stood in the name of Suhano Bai. It was further contended by the counsel for the objector that the present applicant after the lodging of F.I.R. has been continuously putting pressure by sending persons as their agent pressurizing

the complainants to withdraw the complaint and there is all possibility of these people putting undue pressure upon the complainants if they are granted the benefit of Anticipatory Bail and they can also influence the witnesses to be examined on behalf of the complainant's side. The counsel for the respondents opposing the bail application submits that, the two complainants have been put to immense loss by way of losing their ancestral property. It was further contended that the said Azhar Muneer further has sold the property to some other different person and all this further complicates the case and thus prayed for rejection of both the bail applications.

8. Having heard the contentions put forth on either side and on perusal of record, undisputedly, the applicant in MCRC No. 861/2017 – Sevakram Marabi – a Patwari and the second applicant – Azhar Muneer is a purchaser of the disputed property.

9. So far as the role played by each of the applicants are concerned, Sevakram Marabi is a Patwari who is said to have only complied with the order of Tahsildar in a mutation case.

10. So far as the applicant Azhar Muneer is concerned, he is the person who is said to have purchased the property which otherwise stood in the name of Anandram in the revenue record.

11. What primarily appears from the proceedings is that the police authorities had initially examined the matter and they did not find cognizable offence in the facts of the case and had therefore submitted a closure report.

12. Further what also stands revealed from the proceedings is that the complainants till date have not initiated any steps for setting aside of the sale deed executed between Anandram and Azhar Muneer and the subsequent sale deed between Azhar Muneer and Anil Kumar Divedi. As long as these two sale deeds are concerned they are not challenged before any court of law, the two sale deeds cannot under any circumstances be said to be documents null and void.

13. Another aspect which cannot be lost sight of is that though the mutation has been done on 27/12/2012 in the name of Anandram by playing fraud, but an F.I.R. in the instant case was lodged only on 10/09/2017. Thus, there appears to be a considerable delay, coupled with the fact that the police authorities themselves have in the past submitted a closure report.

14. In view of the aforesaid facts and circumstances of the case, this Court is of the opinion that, prima-facie, a strong case for grant of Anticipatory Bail to the applicants has been made out.

15. Accordingly, both the applications i.e. MCRCA Nos. 861/2017 and 928/2017 are allowed. It is directed that in the event of arrest of the present Applicants in connection with the aforesaid offence, they shall be released on bail on furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the concerned arresting/investigating officer or the Court concerned, as the case may be, with the following terms and conditions:

(i) that the applicants shall make themselves available for interrogation before the concerned Investigating Officer as and when required;

(ii) that the applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;

(iii) that the applicants shall not act in any manner which will be prejudicial to fair and expeditious trial; and

(iv) that the applicants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE