

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

ANTICIPATORY BAIL APPLICATION NO.471 OF 2018

Nandkishore Mukundrao Birari Applicant
Vs.
The State of Maharashtra Respondent

**ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.474 OF 2018**

Bhaskar Murlidhar Handore Applicant
Vs.
The State of Maharashtra Respondent

**ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.487 OF 2018**

Ramsingh Hiralal Sulane Applicant
Vs.
The State of Maharashtra Respondent

**ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.488 OF 2018**

Ravindra Ramesh Bharde Applicant
Vs.
The State of Maharashtra Respondent

ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.588 OF 2018

Sachin Dinkar Daptari & Ors. Applicants
Vs.
The State of Maharashtra Respondent

ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.589 OF 2018

Aryan Sachin Daptari Applicant
Vs.
The State of Maharashtra Respondent

ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.592 OF 2018

Dhananjay Vivek Mahajan & Ors. Applicants
Vs.
The State of Maharashtra Respondent

Mr. Vivek Arote i/by Mr. Harshal Patil for the Applicant in ABA No. 474 of 2018.

Mr. Sandeep Shinde i/by ERGO Juris for the Applicant in ABA No. 471 of 2018.

Mr. Aniket U. Nikam for the Applicant in ABA No. 487 and 488 of 2018.

Mr. Anil Sakhare, Senior Counsel i/by Mr. Raviraj R. Paramane for the Applicant in ABA No. 588 of 2018.

Mr. A.P. Mundargi, Senior Counsel i/by Mr. Vaibhav R. Gaikwad for the Applicant in ABA No. 589 of 2018.

Mr. A.P. Mundargi, Senior Counsel a/w Mr. M.S. Mohite I/by Mr. Sachin Gorwadkar for the Applicant in ABA No. 592 of 2018.

Mr. Deepak Thakare a/w Ms. Veera Shinde APP for the State.

Coram : ***Smt. Sadhana S. Jadhav, J.***

Date : 4th June, 2018

P.C.:

1 Heard the learned counsel for the applicants and the learned APP.

2 These are the applications under Section 438 Code of Criminal Procedure. The applicants herein are apprehending their arrest in Crime No.18 of 2018, registered at Trimbak Police Station, District Nashik, for the offences punishable under Sections 420 read with 34 of Indian Penal Code.

3 The applicant in ABA No.471 of 2018, Nandkishore Birari was officiating as Circle Officer at Trimbakeshwar from 2005 to 2009.

4 The applicants in ABA No. 588 of 2018 Sachin Dinkar Daptari, Sandhya Sachin Daptari, Surekha Vivek Junnare and Pushkar Vivek Junnare are the lease-holders of the property situated at Gat no.301 admeasuring 10 hectare, 70 R, Gat no.321 admeasuring 6 hectare, 10.8 R. and Gat No.327 admeasuring 9 hectare and 0.02 R. situated at Trimbakeshwar (hereinafter referred as “the suit land”). The lease was executed by Prabhakar Mahajan, Sadashiv Mahajan, Prakash Mahajan, Harshal Mahajan and Vivek Mahajan. The lease-deed was executed on 20th June 2007. The witnesses to the said lease-deed are Mrs. Deepali Paithankar and Mrs. Arti V. Yarnalkar.

5 The applicant in ABA No.474 of 2018, Mr. Bhaskar Murlidhar Handore was officiating as Tahsildar

6 The applicant in ABA No.487 of 2018, Ramsingh Hiralal Sulane was the Tahsildar.

7 The applicant in ABA No.488 of 2018, Ravindra Ramesh Bharde was also one of the Tahsildar.

8 The applicants in ABA No.592 of 2018, Dhananjay Vivek Mahajan and others are original occupants of the said lands since 17th November 1853

9 The applicant in ABA No. 589 of 2018, Mr. Aryan Sachin Daptari was a land dealer.

10 It is the case of the prosecution that on 24th March 2018, one S.M. Nirgude lodged a report at the police station alleging therein that all the applicants herein, without obtaining any permission, had transferred 'Inami lands' in favour of third party and that the public servants herein had granted permission for transfer of the said lands without verification of the documents and facts. It is alleged that the above mentioned lands are Inami lands of Kolambika Devi and Gangadwar Trust, Trimbakeshwar therefore, no third party interests could be created without legal permission. However, by

virtue of certain agreements dated 13th August 2007, the lands were transferred. It is alleged that on perusal of the agreement, it transpires that the lands were reserved for Eco-friendly park/water sports and amusement parks/convention centre/ health centre, arts and crafts villages/ cultivation of commercial ayurvedic medicinal plants for the visitors, and/or shall sub-lease, and/or assign the said land to another Public Trust in which the lessee shall be the Managing Trustee for the purpose of starting a Home for the old and disabled persons.

11 According to the complainant, the applicants in ABA No. 588 of 2018 namely Sachin Dinkar Daptari and others were not protected. They were the only tenants. By the said agreement, the land is transferred in their favour and that they cannot be the owners as well as the protected tenants. There would be a violation of Section 32A of Bombay Tenancy and Agricultural Lands Act. That Talathi had no authority to grant permission and therefore according to the complainant, all the accused had in collusion committed fraud.

12 The respective counsel submit that the Trust had passed a Resolution in the General Meeting of Kolambika Devi and Gangadwar Trust contending therein that Vivek Mahajan and others had prepared a tenancy deed and that the Mahajan family were the Vahivatdars of the said land since long. They were cultivating said land since 17th November 1853 i.e. much before Bombay Tenancy and Agricultural Lands Act had come into effect.

13 According to the complainant, the permission of the Charity Commissioner to transfer the said lands was contemplated under Section 36 of the Bombay Public Trusts Act. The same was not obtained. The public servants i.e. the Tahsildar and Circle Officers had carried out mutation entries in the documents submitted by the valid members of the Trust and they were accordingly certified.

14 Learned counsel for the applicants also submit that the permission of the Charity Commissioner under Section 36 of the

Bombay Public Trusts Act was necessary only in the eventuality that the lease-deed would be for more than 10 years. However, in the present case, the lease-deed is executed for 9 years.

15 It is the allegation of the complainant that since the lease-deed is illegal, the government is put to loss in respect of revenue. However, learned counsel for the applicants submit that the said properties are, scheduled Devasthan Inam Class-3 properties. Therefore, it was not necessary to pay revenue, hence no loss would be caused to the State Exchequer. The applicants have also placed on record the revenue extract of 1260 Fasali year, which shows that Mahajan family was the Vahivatdar of the said land. It is submitted that there are proceedings pending before the Charity Commissioner. It is also a record that the applicant Ramsingh Hiralal Sulane in ABA No.487 of 2018 upon learning that the purchasers had submitted proposal to the Revenue Minister to remove the exemption of agricultural land revenue assessment. As the said properties were scheduled properties as per Devasthan Inam

Class-3. The Tahsildar had also made a request that the nature of the lands be converted to fully assessed land. It is pertinent to note that the Minister of State Revenue has upheld the orders passed by the Tahsildar.

16 In view of the papers of investigation and the fact that the government has approved the said transactions and that the documents are seized by the investigating agency, custodial interrogation would not be imperative, hence, the applicants deserve pre-arrest bail.

17 The applicants herein were granted interim relief vide order dated 9th March 2018. It is not the contention of the prosecution that the applicants have committed breach of any conditions. Hence, the order dated 9th March, 2018 deserves to be confirmed on same terms and conditions.

The applications are allowed and disposed of.

(*Smt. Sadhana S. Jadhav, J*)