

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2178 OF 2017

1. Sevaldas Varialdas Bijlani
2. Bhagibai Sevaldas Bijlani ...Applicants.
vs.
The State of Maharashtra ...Respondent.

WITH
CRIMINAL APPLICATION NO.222 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 2178 OF 2017

Moti G.Duseja ...Applicant.
vs.
The State of Maharashtra ...Respondent.

WITH
ANTICIPATORY BAIL APPLICATION NO. 956 OF 2018

Reshma Kishore Pamnani ...Applicant.
vs.
The State of Maharashtra ...Respondent.

Mr. Ganesh Gole for the Applicants in ABA No.2178 of 2017.
Mr. Subodh Desai i/by A.S.Sawant for the Applicant in ABA No.
956/2018.
Mr. Kailas Deval for the Applicant in Criminal Application
No.222/2018 in ABA No.2178/2017.
Ms. A.A.Takalkar APP. for the State.

Ashok
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CORAM : A.S.GADKARI, J.
DATE : 17th July, 2018

P.C.

1. These are applications under Section 438 of the Code of Criminal Procedure for pre-arrest bail in CR No.I-315 of 2017 dated 10.11.2017 under Sections 420, 467, 468, 471, 120(B) of the Indian Penal Code.

2. Heard Shri. Ganesh Gole, the learned counsel appearing for the applicants in ABA No.2178 of 2017, Shri. Subodh Desai, learned counsel appearing for the applicant in ABA No.956 of 2018, Shri. Kailas Deval, the learned counsel appearing for the intervener in Criminal Application No.222 of 2018 and the learned APP., Ms. A.A. Takalkar for the State. Perused the entire record produced before this Court by the applicants and the record of investigation. Also perused the affidavit in reply filed by the Investigating officer Shri. Shantaram Awasare, Assistant Commissioner of Police, EOW, Thane dated 21/2/2018.

It is to be noted here that, Mr. Deval, the learned counsel appearing for the intervener Shri. Moti G. Duseja while opposing the applications for pre-arrest bail took me through the entire record without withholding any document, even though it was in favour of the applicants.

3. The applicants in ABA NO.2178 of 2017 were granted interim relief by an Order dated 15.11.2017 on the ground that the Investigating Officer was not present to give instructions to the learned APP. The applicant in ABA NO. 956 of 2018 was granted interim relief by an Order dated 4.5.2018 on the ground that, she was protected by interim order of the Sessions Court till her application for anticipatory bail was rejected by the impugned Order therein.

4. The first Information report dated 10.11.2017 is lodged by Shri. Jagatsingh R. Girase, Administrator Ulhasnagar City Settlement and Sub Divisional Officer, Ulhasnagar. It is stated that, the informant was working on the post of Administrator and Sub Divisional Officer for last two months prior to the date of lodgment of the crime. That, under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, Sanad was issued by the said Office. That, on 27.2.2015 Shri. Moti Duseja (Intervener) had submitted one complaint with the said office demanding legal action regarding Appendix XXII- Certificate of Sale (free hold properties) by the Sanad holder Smt. Bhagibai Sevaldas pertaining to Plot No.620(part) Sheet No.75, Camp No.3, Ulhasnagar, admeasuring 725 sq. yards for which Sanad was issued on 4.5.1968 (28.12.1967) and Appendix XXIV-Sanad holder Shri.

Sevaldas Bijlani pertaining to Plot No, 620 (Part) M.P. Road and adjacent land, Barrack No.758, Ulhasnagar Camp No.3 dated 4.5.1968 (31.10.1963) admeasuring 700 sq. yards. as bogus and forged documents and therefore, appropriate action may be initiated in that behalf. The Office of the first informant after receipt of the said complaint forwarded the said documents to the Chief Handwriting Examiner, Crime Investigation Department, Pune for verification and the informant received the report on 5.2.2017. The handwriting expert has opined that, there are dissimilarities in the signatures marked in the aforesaid two documents than with admitted signatures of the concerned persons who have alleged to have signed the said documents. It is further stated that, after receipt of the said report and after verification of the record it was revealed to the informant that, the aforesaid two Sanads are bogus and therefore, the Tahsildar, Ulhasnagar has taken possession of the said plot of land on 2.6.2017. A detailed report was thereafter submitted to the Government of Maharashtra and in furtherance of the Order passed by the Collector of Thane by its letter dated 26.10.2017 the present crime is registered against the applicants Shri. Sevaldas Bijlani and Smt. Bhagibai Bijlani and the purchasers of the said land i.e. Shri.

Ghanshyamdas Tuniya, Shri. Rajesh Dudhani, Shri. Mukesh Dudhani, Shri. Chander Chawla and Shri. Kishan Lahori. It is stated that, by preparing forged and fabricated documents the concerned accused persons have committed the act of cheating against the Government. In the premise, the present crime is registered.

5. The record indicates that, on 31.10.1963 a Deed of Conveyance was executed between the Government of India as vendor and Shri. Sevaldas Bijlani (Applicant) pertaining to Plot No.620 (part), M.P. Road and adjacent land Barrack No.758 Ulhasnagar Camp No.3 admeasuring about 700 sq. yards and he was put in possession therefrom. On 28.12.1967 a Certificate of sale was issued in favour of Smt. Bhagibai S. Bijlani (Applicant) pertaining to Plot No.620 (Part) Sheet No.76, Camp No.3, Ulhasnagar, admeasuring 725 sq. yards by the competent authority. It is alleged by the prosecution that these two documents are bogus and fabricated one. That, on 19.3.1968 a survey was carried out of Unit Nos. 128 and 129 i.e. in respect of the subject land and Mr. Hassomal Harpaldas and Dhanpal Harpaldas Chandwani were found in possession of the part of the said land. That, on 12.5.1969 a corrigendum was issued in favour of Smt. Bhagibai Bijlani by the Managing Officer and the Competent Authority

on behalf of the Government of India. On 30.1.1981 the competent authority took decision and recorded the name of Shri. Hassomal Chandwani and ors. in the Implementation Register showing their possession of Unit Nos. 128 and 129. The legal heirs of Shri. Hassomal applied to the Sub Divisional Officer on 15.12.2009 for recording their names being the legal heirs as Shri. Hassomal Chandwani expired on 5.9.2005. The Inspecting Officer on 13.5.2010 recorded the names of the legal heirs of Shri. Hassomal Chandwani. That on 29.10.2012 the legal heirs of Shri. Hassomal Chandwani executed Deed of Conveyance in favour of accused No.1- Ghanshyam Tuniya (40% share); accused No.2-Mukesh Dudhani (20% share); accused No.3- Rajesh Dudhani (20% share); accused No.4 Chander Chawla (10% share) and the intervener herein Shri. Moti Duseja (10% share) as purchasers in respect of Unit Nos. 129, 130, Plot No.620 and 621, Chalta No.s 218 and 219 Sheet No. 76 area admeasuring 1500 sq. yards. (CTS No.8872). That, on 28.12.2013 Shri. Kishan Lahori (accused No.5) requested the Office of Sub Divisional Officer for details of Plot No.620 Sheet No.76 and the said letter was a received by Shri. Prakash Gaikwad (accused No.8) who alleged to have been subsequently made entry in the inward register. That, 28.12.2013

was 4th Saturday and was in fact a holiday. On 31.12.2013, Mr. Prakash Gaikwad (accused No.8) without having any authority and without verifying any record replied the said letter dated 28.12.2013, stating therein that, as per the office record, conveyance was executed on 31.10.1963 in favour of Shri. Sevaldas Bijlani (Applicant/accused No.6) and on 4.5.1968 in favour of Smt. Bhagibai Sevaldas (Applicant/accused No.7). That, both the letters have same outward No. i.e. 117. The record further indicates that, outward register maintained by the office of the Sub Divisional officer does not show the letter issued by Shri. Prakash Gaikwad to the Sub Divisional Officer on 31.12.2013. That, there is no entry in the inward register dated 28.12.2013 of the application filed by Shri. Lahori. That, on 26.12.2014 the intervener Shri. Moti Duseja by accepting a sum of Rs.20,00,000/- executed a Release Deed thereby relinquishing his right in the said property. That, on 1.1.2015 Smt. Reshma K.Pamnani issued verification letter confirming conveyance deeds of 1963 and 1968. The applicants Shri. Sevaldas Bijlani and Smt. Bhagibai Bijlani executed deed of conveyance in favour of Shri. Ghanshyamdas Tuniya-accused No.1, Mukesh Dudhani-accused No.2, Rajesh Dudhani- accused No.3, Chander Chawla- accused No.4 and Kishan

Lahori- accused No.5 partners of M/s. Awanti Enterprises on 16.2.2015 for a consideration of Rs.49,00,000/- for an area admeasuring 1425 sq. yards equivalent to 1191.30 sq. meters.

6. The intervener Mr. Moti Duseja submitted a complaint on 27.2.2015 with the concerned authority and the Government of Maharashtra ordered enquiry into the same. The Sub Divisional Officer, Ulhasnagar by its letter dated 12.2.2015 informed that, his office did not receive letter dated 28.12.2013. The Sub Divisional Officer Ulhasnagar submitted its report dated 20.8.2015 pointing out the serious discrepancies like fraud and fabrication of documents. By a further report dated 23.10.2015 the Sub Divisional Officer informed the concerned that, a letter dated 4.6.1983 issued to Shri. Salamatrai Puruswani is not available in the record. The Administrator and Sub Divisional Officer, Ulhasnagar submitted its report dated 31.5.2016 to the Government about several irregularities committed by Shri. Prakash Gaikwad (accused No.8) and Mrs. Reshma Kishore Pamnani (applicant/accused No.9) in respect of issuance of verification letters pertaining to conveyance deeds of various plots which appeared to be doubtful or suspicious. That, the concerned authority received Hand Writing Expert's report from CID stating that, there are dissimilarities

in handwriting habits indicating different authorities from admitted signatures. By a further letter dated 2.6.2017, the Sub Divisional officer cancelled and did not give effect of the said alleged conveyance deeds/Sanads issued in favour of the applicants Shri. Sevaldas Bijlani and Smt. Bhagibai Bijlani.

The afore stated chronology of events emerges from the various documents placed on record by the parties herein.

7. Mr. Kailas Deval, the learned counsel appearing for the intervener Shri. Moti Duseja submitted that, on the date of issuance of Sanads in favour of the applicants Shri. Sevaldas Bijlani and Smt. Bhagibai Bijlani in the years 1963 and 1967 they were minors and the alleged purchase of the said land by them creates doubt in the mind. That, the said alleged allotment of land in their favour is contrary to the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954. He further submitted that, Shri. Prakash Gaikwad (accused No.8) by his communication dated 15.7.2015 addressed to the Administrator and Sub Divisional Officer, Ulhasnagar has admitted the mistake committed by him in accepting the said letter dated 28.12.2013 and issuing response to it dated 31.12.2013. Mr. Deval, however, fairly pointed out the fact on record that, after

the alleged purchase price was received by Shri. Sevaldas Bijlani through bank transfer in his account, he has immediately returned certain amount in favour of Shri. Hitesh Tuniya i.e. son of accused No.1 Ghanshyamdas Tuniya. Mr. Deval further submitted that, taking into consideration the wide scope of the investigation, the custodial interrogation of the applicants is necessary and therefore, their applications for pre-arrest bail may be rejected.

8. The learned APP. submitted that, the register of Implementation of Committee Decisions has been tampered with thereby inserting the names of the applicants Shri. Sevaldas Bijlani and Smt. Bhagibai Bijlani as Sanad holders of the said land. She on instructions submitted that the said insertion has been made by Shri. Prakash Gaikwad and/or Smt. Reshma Pamnani. She further submitted that, it is revealed during the course of investigation that many of the documents relied upon by the applicants Shri. Sevaldas Bijlani and Smt. Bhagibai Bijlani are forged and fabricated documents. She further submitted that, the Investigating Officer has placed on record the progress of the investigation by his affidavit dated 21.2.2018 wherein it is stated that, the Sanads claimed by the applicants Shri. Sevalram Bijlani and his wife Smt. Bhagibai Bijlani do not at all exist.

That, there is no contemptuous record available with the office of the Sub Divisional Officer. That the conveyance deeds are bogus and no such record is available to justify the said conveyance deeds. She on instructions submitted that, the co-accused Shri. Prakash Gaikwad with a view to favour accused Nos. 1 to 5 has in fact forged and fabricated the Government record. She therefore prayed that, the present applications may be rejected.

9. The record indicates that, co-accused Shri. Prakash Gaikwad (accused No.8) was working as a Senior Clerk in the office of Sub-Divisional Officer, Ulhasnagar in its Administrative Department till his suspension in January 2014. The applicant Smt. Reshma Pamnani took over the charge after suspension of Shri. Prakash Gaikwad in the month of January, 2014. The role attributed to the applicant Smt. Reshma Pamnani is that, she issued letters dated 1.1.2015 and 16.1.2015 to the Land Revenue Office stating that she has verified the record pertaining to the said Sanads. The record further indicates that the Sub Divisional Officer has withdrawn the said letters after coming to the knowledge about the present fraud.

The Information Officer appointed under the Right to Information Act from the office of Sub-Divisional Officer, Ulhasnagar

by his response dated 4.1.2018 has informed to the concerned that, the original Sanads of applicants Shri. Sevaldas Bijlani and Smt. Bhagibai Bijlani have been submitted with Central Police Station, Ulhasnagar for the purpose of investigation.

It appears that, the names of the applicants Shri. Sevaldas Bijlani and Smt. Bhagibai Bijhlani in the Register of Sold Out Plots of Ulhasnagar settlement prima facie appears to be written chronologically, without any interpolation or insertion therein. The record further indicates that, in response to the application filed by the intervener under Right to Information Act, the Information Officer from the Office of the Sub Divisional Officer, Ulhasnagar by its reply dated 8.3.2010 has forwarded a corrigendum dated 12.5.1969 pertaining to the property in question. That, the said document dated 12.5.1969 is a genuine document and there is no dispute about it. The said document is annexed at Page 321 to the additional compilation filed by the applicant Shri. Sevaldas Bijlani.

The affidavit of the Investigating Officer indicates that, most of the documents involved in the present crime have already been taken into custody by the Investigating agency.

10. It is to be noted here that, the Anticipatory Bail Application

No.957/2018 preferred by the co-accused Shri. Prakash Gaikwad (accused No.8) has been dismissed as withdrawn by this Court today and he has been granted liberty to surrender before the concerned Magistrate having jurisdiction.

11. The applicant Shri. Sevaldas Bijlani is aged about 71 years and the applicant Smt. Bhagibai Bijlani is aged about 68 years. The record further indicates that, after receipt of the alleged consideration towards the sale of the said plots by Shri. Sevaldas, he has immediately transferred substantial amount therefrom in favour of Shri. Hitesh Tuniya, son of accused No.1 Shri. Ghanshyamdas Tuniya and other beneficiaries and it appears that, he has been benefited with little/negligible amount from the alleged sale transaction.

The applicant Smt. Bhagibai Bijlani and Smt. Reshma Pamnani are women aged about 68 and 61 years respectively. As noted earlier the applicant Shri. Sevaldas Bijlani is aged about 71 years.

12. It prima facie appears from the record that, the ultimate beneficiaries of the aforesaid transaction in connivance of Shri. Prakash Gaikwad (accused No.8) have indulged into the present crime and the the applicants Shri. Sevaldas Bijlani and Smt. Bhagibai Buijlani have been used as pawns in achieving their ultimate goal. The

investigation in the present crime is solely based on documents and the investigating agency has practically seized all the documents pertaining to the present crime.

13) In view of the above, this Court is of the opinion that, custodial interrogation of the applicants for further investigation of the present crime is not necessary and they can be protected by pre-arrest bail.

In view thereof, the interim relief granted by Orders dated 15.11.2017 in ABA No. 2178 of 2017 and dated 4.5.2018 in ABA No. 956 of 2018 are hereby confirmed. However, the condition to attend the Investigating officer is waived.

Applications are allowed in the aforesaid terms.

14. In view of the Order passed in ABA No. 2178 of 2017 and 956 of 2018, the Criminal Application No.222 of 2018 for intervention does not survive and is accordingly disposed off.

(A.S.GADKARI, J.)