

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2038 OF 2018

Rajesh Kumar	Applicant
versus	
The State of Maharashtra	Respondent

WITH
CRIMINAL APPLICATION NO.1213 OF 2018
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2038 OF 2018

Vijaykumar Hegde	Intervenor
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In the matter between :

Rajesh Kumar	Applicant
versus	
The State of Maharashtra	Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.291 OF 2019

Rajesh Kumar	Applicant
versus	
The State of Maharashtra	Respondent

WITH
CRIMINAL APPLICATION NO.179 OF 2019
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.291 OF 2019

Vijaykumar Govind Hegde	Intervenor
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In the matter between :

Rajesh Kumar	Applicant
versus	
The State of Maharashtra	Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.292 OF 2019

Rajesh Kumar	Applicant
versus	
The State of Maharashtra	Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.293 OF 2019

Rajesh Kumar	Applicant
versus	
The State of Maharashtra	Respondent

WITH
CRIMINAL APPLICATION NO.181 OF 2019
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.293 OF 2019

Vijaykumar Govind Hegde	Intervenor
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In the matter between :

Rajesh Kumar	Applicant
versus	
The State of Maharashtra	Respondent

ABA No.2038 of 2018 :

Mr.Raja Thakare with Mr.Vikrant Negi and Mr.Pratik Thakkar I/by DSK Legal for applicant.

Mr.S.V.Marwadi for intervenor in APPP.No.1213 of 2018.

Mr.R.M.Pethe, APP, for State.

Mr.Salunkhe, Police Inspector, present.

ABA No.291 of 2019 :

Mr.Niranjan Mundargi with Mr.Vikrant Negi and Pratik Thakkar I/by DSK Legal for applicant.

Mr.Rishi Bhuta with Ujjwal Gandhi and Bhumika Khandelwal for intervnor in APPP No.179 of 2019.

Mr.R.M.Pethe, APP, for State.

Mr.Rajput, Police Sub Inspector, present.

ABA No.292 of 2019 :

Mr.Gaurav Parkar with Mr.Vikrant Negi and Pratik Thakkar I/by DSK Legal for applicant.

Mr.Rishi Bhuta with Ujjwal Gandhi and Bhumika Khandelwal for

intervenor in APPP No.180 of 2019.

Mr.R.M.Pethe, APP, for State.

Mr.Mone, Assistant Police Sub Inspector, present.

ABA No.293 of 2019 :

Mr.Niranjan Mundargi with Mr.Vikrant Negi and Pratik Thakkar I/by DSK Legal for applicant.

Mr.Rishi Bhuta with Ujjwal Gandhi and Bhumika Khandelwal for intervenor in APPP No.181 of 2019.

Mr.R.M.Pethe, APP, for State.

Mr.Lahane, Assistant Police Sub Inspector, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th February 2019

PC :

1. The applicant in all these applications is seeking anticipatory bail under Section 438 of Code of Criminal Procedure, 1973. Criminal Anticipatory Bail Application No.2038 of 2018 is preferred apprehending arrest in connection with CR No.262 of 2016 registered on 8th October 2016 with Kherwadi Police Station, Mumbai, for offences punishable under Sections 465, 467, 468, 471 r/w 34 of Indian Penal Code and under Sections 43, 72-A of Information Technology Act, 2000.

Criminal Anticipatory Bail Application No.291 of 2019 is preferred in respect to CR No.206 of 2017 registered with Goregaon Police Station, Mumbai for offences under Sections 420, 465, 468, 471 r/w 34 of Indian Penal Code. The FIR has been registered on 21st May 2017.

Criminal Anticipatory Bail Application No.292 of 2019 is preferred in respect of CR No.1163 of 2018 registered with Ulhas

Nagar Police Station for offences under Section 420 r/w 34 of Indian Penal Code. The FIR was lodged on 6th July 2018.

Criminal Anticipatory Bail Application No.293 of 2019 is preferred in respect of CR No.303 of 2018 registered with Borivali Police Station for offences under Sections 420, 511 r/w 34 of Indian Penal Code. The FIR was lodged on 19th June 2018.

2. The applicant had preferred applications for anticipatory bail before Sessions Court, which were rejected by respective Courts and hence the applicant has preferred present applications.

3. CR No.262 of 2016 registered with Kherwadi Police Station was registered on the complaint of the intervenor alleging that the wife of complainant is in relationship with the applicant. The complainant found documents, such as, Aadhar Card showing name of the father of the applicant as Babasahib; the application made to Income Tax Authorities for change of applicant's father's name on PAN card from Kundomal Dulhanomal to Babasahib; birth certificate showing names of parents of applicant as Babasahib and Ammasahib; verification certificate issued by Corporator Surendra Bagalkar verifying that the applicant has residential address at Zawbawadi, Girgaum, Mumbai, which is address of his employee etc.. It is alleged that the applicant being foreign national, is not permitted to purchase immovable property in India and yet he has purchased the property at Bandra, Mumbai. On making inquiry with Ulhas Nagar Municipal authorities, it was learnt that there is no record of the applicant's birth in the register of birth maintained by them.

4. In CR No.206 of 2017 which is subject matter of ABA No.291 of 2019, it is alleged that the applicant has obtained a forged birth certificate from Ulhas Nagar Municipal Corporation in collusion with other co-accused and on the basis of same, he had obtained PAN and Aadhar cards. In CR No.1163 of 2018 which pertains to ABA No.292 of 2019, it is alleged that the applicant's intention is to usurp trust property by forging documents/identification proofs, as his spiritual parents are expired and they have no legal heirs. In respect to CR No.303 of 2018 which pertains to ABA No.293 of 2019, it is alleged that the applicant has attempted to change his name pursuant to death of his spiritual parents.

5. The applicant was represented by respective advocates. The complainant has intervened by preferring intervention applications in all these anticipatory bail applications to oppose the reliefs sought by applicant-accused.

6. Learned counsel for applicant Mr.Thakare submitted that the applicant has been falsely implicated in these cases on account of enmity. It is submitted that the dispute is primarily between the complainant and his wife. The complaint is lodged against applicant out of vendetta and to cause harassment to him. It is submitted that custodial interrogation of the applicant is not necessary as the matter relates to documents. The applicant is a businessman by profession and one of his business venture is in the field of garments and for the said business he often visits India and from time to time in the initial months of 2013 he was looking for commercial premises at Mumbai and at that time the applicant met the complainant and he was

introduced to him as an advocate and by way of profession. Although the applicant is US citizen, he remains person of Indian origin. By virtue of Regulation-4 of Foreign Exchange Regulations, 2000, such persons are permitted to acquire and sell residential and commercial properties. It is submitted that other accused were arrested and on completing investigation charge sheet is filed against them. The applicant has been dragged into prosecution by the complainant. It is submitted that no offence is made out against applicant. He is willing to co-operate with investigation. The applicant was the follower of spiritual Guru Puja Babasahib and Puja Ammasahib, who over a period considered the services of applicant and treated him as their son; and therefore the applicant always wanted his name to be associated with them. The applicant had taken professional help from the complainant and he was advised that he should officially change his name. As he desired to associate his name with his spiritual Gurus and as per the advise, the applicant got his name changed by publishing the same in official gazette. He had also applied to got his name changed on PAN card on the advise of his Chartered Accountant. It is submitted that after changing his name, he was introduced to one Santosh Suryawanshi, who promised that he would do the needful and in good faith the applicant had paid him substantial amount. The said person had obtained signatures of applicant on several documents. The applicant then learnt that Mr.Suryawanshi has obtained his birth certificate showing that he was born at Ulhas Nagar and his birth was registered with Ulhas Nagar Municipal Corporation on some unknown date of July-1970., and the said birth certificate was issued on or about 4th October 2012. The complainant developed dispute with his wife. She has been granted anticipatory bail. It is submitted

that the applicant had initiated proceedings in the High Court seeking appropriate reliefs. The applicant had also approached Hon'ble Supreme Court of India seeking reliefs. It is submitted that the Hon'ble Supreme Court by order dated 14th January 2019 granted stay to the look out notice on the undertaking of the applicant before the Court to join and continue with the on-going investigation within four weeks and directed that the application for anticipatory bail be decided independently.

7. Learned counsel Mr.Mundargi appearing in ABA No.291 of 2019 and ABA No.293 of 2019 submitted that the concerned FIRs are lodged against the applicant with a view to harass him. The offences as alleged are not made out against applicant. In addition to the submissions advanced by learned counsel Mr.Thakare, it is submitted that the applicant is an ardent devotee of Babasahib and Ammasahib. They had played influential role in his life. In December-2014 he met Mr.Suryawanshi for the first time, who suggested that he can get the name changed of the applicant in every statutory identification proof and publish the same in official gazette in 2014. However, Mr.Suryawanshi procured fake birth certificate which was dated 4th October 2012 and issued by Ulhas Nagar Municipal Corporation, where his fathers name is mentioned as Babasahib and mother's name is mentioned as Ammasahib. The birth certificate of the applicant was issued by Ambernath Municipal Council in the name of Rajesh Kundomal Dudhanomal Manghwani. He had filed complaint against Mr.Suryawanshi and FIR was registered vide CR No.1408 of 2016. The applicant after learning about registration of FIR had forwarded letters to police and indicated them about the actual facts. The complainant has filed various complaints against his wife and

the applicant at different police stations. The applicant was threatened by the complainant and in that regard non-cognizable complaint was filed. It is submitted that the applicant had filed Criminal Writ Petition No.4688 of 2018 seeking to quash non-bailable warrant and proclamation u/s 82 of Cr.P.C issued by learned Magistrate. The applicant had given an undertaking that he shall appear before police and co-operate with them. The undertaking was accepted and non-bailable warrant as well as proclamation notice was stayed. The writ petition was disposed off by order dated 22nd January 2019. The complainant had preferred petition before Hon'ble Supreme Court challenging the order dated 30th October 2018 passed by this Court. The said petition was disposed off by order dated 26th November 2018 and the applicant was directed to appear before the Chief Judicial Magistrate within fifteen days. Thereafter applicant preferred Miscellaneous Application No.3102 of 2018 before Hon'ble Supreme Court for recalling order dated 26th November 2018. The Hon'ble Supreme Court granted extension to the applicant to appear before the Magistrate. It is submitted that vide order dated 14th January 2019, the look-out notice was stayed by Supreme Court on the undertaking of applicant to join and continue with on going investigation within a period of four weeks. Miscellaneous Application No.3102 of 2018 was disposed off. It is submitted that the applicant is willing to co-operate with investigation. It is submitted that the complaint filed by the complainant is only with a view to get the applicant arrested on false authorities which is counter blast to FIR registered by applicant. It is submitted that the applicant has given an undertaking that he shall appear before the investigating officer which has been acknowledged by this Court as well as Hon'ble Supreme Court.

8. Learned advocate Mr.Parkar appearing in ABA No.292 of 2019 for applicant reiterated the submissions advanced by learned counsel appearing in other applications. The wife of complainant had filed company petition before NCLT making grievance of oppression and mis-management against complainant. On 22nd September 2016 the NCLT passed an order in I.A.No.48 of 2016 filed on behalf of complainant and his company Tanvi Constructions Private Limited, appointing retired Judge of Hon'ble Supreme Court as an independent Chairman, who had filed report in connection with management of the company indicting the role of complainant. It is submitted that on account of vendetta, several complaints are filed with different police stations by the complainant.

9. Learned APP submitted that there is sufficient evidence against the applicant collected during the course of investigation. The applicant is involved in fabricating documents. His custodial interrogation is necessary. It is submitted that the letter dated 4th November 2016 issued by Ambarnath Municipal Council, Department of Birth and Death to the Senior Police Inspector, Kherwadi Police Station, it is stated in respect to verification of birth certificate of the applicant, that the birth registers of Ambarnath Municipal Council was inspected for the period from 1967 to 1970 and there appears no entry of date of birth of Rajesh Kundomal Manghwani as on 2nd May 1967. He pointed out the birth certificate mentioning the date of birth of the applicant as 2nd May 1967 issued by Ambarnath Municipal Council, which is apparently false in accordance with the letter referred to hereinabove. Learned APP also pointed out the birth certificate issued by Ulhas Nagar Municipal

Corporation which bears registration number CL-47 and date of registration as 7-1970 purported to have been issued in the name of Rajesh Babasahib Kumar. The date of birth is shown as 19-7-1967. The name of mother is shown as Amma.

10. Mr.Marwadi and Mr.Bhuta, learned counsel representing the intervenors/complainants, vehemently opposed the applications for anticipatory bail. It is submitted that the applicant has been giving assurances to attend the investigation but beyond promises he has not taken any steps to participate in the investigation. It is submitted that the submissions advanced by learned counsel for applicant denote that the applicant would appear before the investigating machinery pursuant to order of Hon'ble Supreme Court only if interim protection is granted to him. It is submitted that the applicant is involved in preparing fraudulent documents and is not entitled for protection u/s 438 of Cr.P.C.. It is submitted that the applicant is not of Indian origin because for acquiring various Indian documents, such as, Aadhar card, PAN card etc, he has given different addresses. The address mentioned in the petition, official gazette, Trust Deed registered at Delhi, second application for fresh PAN card dated 10th May 2014, Aadhar Card, third application for PAN card, first birth certificate, second birth certificate, US Passport and for flat purchase in Mumbai, differs from each other. It is submitted that the applicant has not produced any documents to show that he is of Indian origin. It is further submitted that the letter dated 13th September 2017 issued by passport authorities indicate that Passport No.9249646 claimed to be issued by Indian Passport Authorities, was not issued to him. It is further submitted that the birth certificate bearing No.81435 purportedly issued by Ulhas Nagar

Municipal Corporation bears registration number as C1-47. It is submitted that birth register of Ulhas Nagar Municipal Corporation mentions the name of child and parents in connection with registration no.C1-47 as Pandit, father's name as Sadanand Krishna and mother's name as Vilasini. It is submitted that the Sessions Court has rejected the application for anticipatory bail by assigning reasons. The intervenors have filed intervention applications with documents in support of objections for grant of anticipatory bail.

11. I have perused the documents on record. The FIRs in question are lodged at respective police stations. The case of prosecution relates to fabrication of documents. The applications for anticipatory bail were rejected by Sessions Court by assigning cogent reasons. The offences of cheating and forgery are registered against applicant. It is the case of prosecution that the applicant has obtained birth certificate by giving false information and by using forged documents as genuine he has procured Aadhar Card and PAN Card. It appears that the applicant had acquired U.S.citizenship in 2002 by giving false information. He has procured birth certificates from Ambarnath Municipal Council and Ulhas Nagar Municipal Council. It is the contention of applicant that false documents are provided to him by one Suryawanshi. Learned counsel for intervenors, however, pointed out that the FIR lodged by the applicant against Mr.Suryawanshi was investigated and 'A' summary report was granted to the said proceedings and the person named Suryawanshi was not found to be in existence. It is alleged that on the basis of false information and bogus documents, the applicant had procured Aadhar Card and PAN Card in India. He has also purchased properties in India. The applicant was declared as proclaimed offender and warrant was

issued against him which was subsequently stayed by this Court. The investigation reveals that the applicant has utilized false birth certificates viz birth certificate allegedly issued by Ambernath Municipal Council and birth certificate dated 4th October 2012 issued by Ulhas Nagar Municipal Corporation. It is also revealed that in the first birth certificate allegedly issued by Ambernath Municipal Council, the name of applicant is mentioned as Rajesh Kundomal Dulhanomal Manghwani. It is stated hereinabove above that records speak otherwise. The UTI Infrastructure Technology and Services Limited by letter dated 26th October 2016 addressed to Senior Inspector of Police, Kherwadi Police Station, provided documents submitted by the applicant to UTI along with his PAN application. The NSDL E-Governance Infrastructure Limited by letter dated 18th October 2016 revealed that it had received three applications from applicant requesting for a new PAN card or changes or corrections in PAN card bearing different addresses. According to prosecution the applicant got his name changed in official gazette for the period from 17th to 23rd April 2013 from Rajesh Kundomal Dulhanomal Kumar to Rajesh Babasahib Kumar allegedly to get the property of the trust. It is also the prosecution case that the applicant got a certificate issued by Corporator of Gorai certifying the name of father of applicant as Kumar Babasahib with residential address of Pune. It appears that in CC No.157/PW/2018 the Trial Court has issued non-bailable warrant and proclamation against applicant. The applicant filed Criminal Writ Petition No.4688 of 2018. By order dated 30th October 2018 the non-bailable warrant and proclamation have been stayed. The first informant challenged the order of High Court by filing SLP before Supreme Court, which was dismissed. As per order dated 26th November 2018, the applicant was to produce himself before the

learned Magistrate within two weeks. Thereafter by order dated 10th December 2018 the Hon'ble Supreme Court extended time by fifteen days to enable the applicant to appear before the Magistrate. The applicant did not appear. The Hon'ble Supreme Court then by order dated 14th January 2019 stayed the look out notice on his undertaking before the Court to join and continue with the on going investigation within a period of four weeks from 14th January 2019. The applicant has not appeared before the investigating officer so far. While rejecting the application for anticipatory bail the Sessions Court had observed that in order dated 28th January 2019 that while considering pre-arrest bail it has become necessary to ascertain whether the applicant would be available before the investigating officer for interrogation and investigation. One of the allegation is that the applicant had attempted to change his name on the PAN card. It is also the case of prosecution that the applicant has submitted affidavit by showing false address. He had collected documents from different places. The applicant is not available for interrogation since long. It is alleged that the applicant along with co-accused for purpose of making changes in the father's name in the PAN card obtained verification certificate from Corporator Ganpat Edke of Ulhas Nagar Municipal Corporation and submitted the same in the NSDL for issuing renewed PAN card. For the purpose of said verification certificate he gave false residential address as Room Nos.15-17, Krishna Nagar, Sindhi Colony, Bail Bazar, Kalyan (W). For obtaining verification statement for the purpose of making changes in the father's name in the PAN card, the applicant made false affidavit on 23rd December 2014 before Executive Magistrate, Bhiwandi wherein it is stated that his name as Rajesh Babasahib Kumar and he is residing at Kalyan and he does not have any proof

of date of birth. The wife of informant had preferred writ petition before this Court for quashing CR No.262 of 2016. The applicant and Kamal Wadhwani had also preferred Writ petition for quashing the FIR in respect to CR No.303 of 2018. All these petitions were disposed off vide order dated 27th June 2018. While rejecting the application for anticipatory bail, the Sessions Court has assigned reasons and need for custodial interrogation.

12. Considering the aforesaid circumstances, nature of offences allegedly committed by the applicant, investigation conducted by police, custodial interrogation of applicant is necessary and hence no case for grant of relief as prayed in these applications is made out. Hence, all applications are required to be rejected.

13. Hence, I pass following order :

ORDER

- (i) Criminal Application Nos.1213 of 2018, 179 of 2019 and 181 of 2019 for intervention are allowed and disposed off;
- (ii) Criminal Anticipatory Bail Application Nos.2038 of 2018, 291 of 2019, 292 of 2019 and 293 of 2019 are rejected.

(PRAKASH D. NAIK, J.)

MST