

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

ANTICIPATORY BAIL APPLICATION NO.2270 OF 2018

Muktabai Eknath Motkari & Anr. Applicants

versus

The State of Maharashtra Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.2203 OF 2018**

Ganesh Uttam Rathod Applicant

versus

The State of Maharashtra Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.2660 OF 2018**

Bhagwan Tukaram Sable Applicant

versus

The State of Maharashtra Respondent

.....

- Mr.Girish Agarwal, Advocate for Applicant in ABA No.2270/18.
- Mr.Sandeep Shinde i/b. Mr.Akshay Purkar, Advocate for Applicant in ABA No.2203/18.
- Mr.Sanjeev Kumar B. Deore, Advocate for Applicant in ABA No.2660/18.
- Mr.H.M. Inamdar, Advocate for Original Complainant in all ABA's.

- Mrs.A.A. Takalkar, APP for the State/Respondent.
- PSI V.V. Bairagi, Sarkarwada Police Station, Nashik City, present.

CORAM : SARANG V. KOTWAL, J.
DATE : 11th JUNE, 2019

P.C. :

1. All these applications arise out of the same FIR and therefore they are disposed of by this common order.
2. The FIR is lodged on 18/09/2018 pursuant to the order passed by the learned Magistrate u/s 156(3) of Cr.P.C. The original complaint was lodged by one Ramesh Balu Mandlik against one Muktabai Motkari, Bhushan Motkari, Tahesildar Ganesh Rathod and Record Officer Bhagwan Tukaram Sable. Muktabai and Bhushan have preferred Anticipatory Bail Application No.2270/18. Tahesildar Ganesh Rathod has preferred Anticipatory Bail Application No.2203/18 and the Record Officer Bhagwan Sable has preferred Anticipatory Bail Application No.2660/18.

3. It is mentioned in the complaint that the dispute is in respect of agricultural land bearing Survey No.28/2, 69/1, 64/1/1, 69/1 Gat No.16 situated at Anandvali within the limits of Municipal Corporation of Nashik. It is mentioned in the complaint that the accused Muktabai claimed to be the sister of the complainant and had made an application for entry in the revenue record. In support of her claim she has submitted the birth extract from the year 1942 mentioning that she was the daughter of one Balu Mandlik. The first informant has obtained copy of such extract by making an application. From such extract he was convinced that the extract was manipulated. There was overwriting and the name was entered in a different ink. According to the first informant such manipulation was possible only with the connivance of Tahesildar and the Record officer. He has further added in his complaint that Muktabai's son Bhima Balu Mandlik was born on 03/01/1952 as per his birth extract. Therefore it was impossible that Muktabai could have been born in the year 1942 as claimed by her. Muktabai had made an application before the Talathi. The Talathi had

sought guidance from the Tahesildar and after giving notices to the complainant and others, had made mutation entry in the revenue record and had entered name of Muktabai. According to the first informant, mutation entry was based on the forged birth extract and therefore he filed his complaint before J.M.F.C. Nashik seeking investigation u/s 156(3) of Cr.P.C. The order was passed for such investigation and the FIR was lodged vide C.R.No.281/18 on 18/09/2019 at Sarkarwada Police Station, Nashik, as mentioned earlier.

4. Heard respective Counsel for the parties, learned Counsel for the Intervener and learned APP for the State.
5. Learned Counsel Mr.Girish Agarwal for the Applicants in ABA No.2270/18 submitted that Muktabai was in fact step-sister of the first informant and in all their family functions she was described as the sister of the first informant. He further submitted that there is no forgery in the birth extract and that she had rightly made application for entry of her name in the

revenue records. He further submitted that after her application, due procedure was followed. The first informant was informed and ultimately the Talathi had entered her name in the revenue record. The first informant had challenged the said mutation entry before the SDO; who had overturned Talathi's decision. SDO's order in turn was challenged before the Additional Collector and finally vide order dated 07/06/2019, the Additional Collector set aside the order passed by the SDO thereby restoring the mutation entry entered in the revenue record. A copy of the order passed by the Additional Collector dated 07/06/2019 is produced today. The certified copy of that order is taken on record and marked 'X' for identification.

6. Mr.Agarwal submitted that the first informant had filed regular Civil Suit against the accused Muktabai and others vide RCS No.74/16 for permanent injunction. Muktabai also has filed her own civil suit against the first informant for partition and thus there was a civil dispute pending between the parties. He further submitted that the entire dispute, if at all, is strictly civil

in nature and no offence is committed. He further submitted that in any case, the evidence pertains to documentary evidence and therefore custodial interrogation of the Applicant is not necessary. He further submitted that the Applicant No.1 is an old lady and her custodial interrogation is not warranted. He submitted that in the entire episode the role of the Applicant No.2 Bhushan Motkari is not made out and he is made an accused only on the presumption that he would be the ultimate beneficiary being the grandson of Muktabai.

7. Learned Counsel Mr.Sandeep Shinde for the Applicant in ABA No.2203/18 submitted that the Applicant Ganesh Uttam Rathod was the Tahesildar since year 2015. The only role attributed to him is that he had given opinion which was sought for by the Talathi in respect of the proposed mutation entry. He submitted that the Tahesildar's opinion is based on the documents submitted to him and he had no way to find out whether the documents were forged documents.

8. Learned Counsel Mr.Sanjeev Kumar Deore for the Applicant in ABA No.2660/18 submitted that Applicant Bhagwan Sable was incharge of the record only from 10/04/2014 to June 2015. He further submitted that the allegations do not make out the exact period in which the offence was committed and therefore there is no prima facie evidence to show the involvement of the Applicant Bhagwan Sable.
9. Learned Counsel Mr.H.M. Inamdar for the Intervener pointed out that the manipulation in the record is manifest from the documents. The only beneficiary was the Applicant Muktabai and therefore the offence is clearly made out against her. He further submitted that the Applicant No.2 Bhushan being her grandson, in active connivance with the Applicants in other Applications, have manipulated the record to create the mutation entry in favour of the Applicant. He therefore submitted that none of the Applicants be granted anticipatory bail.

10. Learned APP Mrs.A.A. Takalkar produced the birth extract in question. Perusal of that extract does show that the name of “Mukta” appears to have been subsequently written in that particular entry. In front of that name Balu Banaji Mali appears in a different handwriting. In the next column there is a reference which indicates that the entry was in fact in respect of death of said Balu Banaji Mali. By simply writing name “Mukta” before name of Balu it was sought to make it appear that it was a birth extract in respect of Mukta.
11. From the bear perusal of that extract it is clear that the name “Mukta” and the date 10/09/1942 is subsequently written in a different ink. The entry appears to be in respect of death of Balu Banaji Mali. It is clear that an attempt is made to take advantage of similarity of name of Balu Mali and Balu Mandlik. At this stage, there is enough evidence to infer that the entry is manipulated. Hand writing expert's opinion mentions that the disputed entry revealed marks of addition and alternation.

However, it has not been possible to decipher the original writings. This apparently shows that there is some manipulation in the record.

12. Now the question before me is whether any of the Applicants' custody should be granted for custodial interrogation.

13. Insofar as the Applicant No.1 Muktabai Eknath Motkari is concerned, she is the obvious beneficiary in the entire episode and therefore she is the logical suspect. However considering her age and since it is an admitted position that she is about 78 years of age, in my opinion, no purpose will be served in arresting her at this stage. The police officers can extensively interrogate her without arresting her. That should serve their purpose. Therefore, on this limited consideration, I am inclined to grant anticipatory bail to Muktabai.

14. Insofar as the Applicant No.2 Bhushan Bhimraj

Motkari, is concerned, in the entire complaint there is no specific allegation against him. He, apparently, is made an accused because he is the ultimate possible beneficiary and who could have been instrumental in creating such documents. However, there is no concrete material at this stage to connect Applicant Bhushan Motkari with the alleged offence. Therefore, even he deserves to be granted protection by way of anticipatory bail.

15. Insofar as Applicant Tahesildar Ganesh Uttam Rathod is concerned, his role is that he has given opinion to the Talathi in favour of Muktabai, which has resulted in the mutation entry being made in favour of Muktabai. There is some force in the submissions of learned Counsel for this Applicant that he had given opinion based on the documents submitted to him by the Talathi. He had no means to record the findings that the documents were forged. He has simply given his legal opinion, for which a criminal offence cannot be fastened against him. Therefore this Applicant Ganesh Rathod deserves to be granted protection from arrest.

16. Insofar as the Applicant Bhagwan Tukaram Sable in ABA No.2660/18 is concerned, as mentioned earlier admittedly he was incharge of that record from April 2014 to June 2015, it is not clear from the record of investigation as to exactly in which year the offence is committed. Therefore it would be unjust to fasten that liability at this stage against the Applicant Bhagwan Sable.

17. Hence though offence is made out at this stage, investigation can still go on without arresting any of the present Applicants. The evidence consists of documentary evidence which is already in custody of the investigating agency. The Applicants shall cooperate with the investigation. The investigating agency is free to investigate the offence by making enquiries with Muktabai. I am making it clear that I am granting relief of anticipatory bail mainly because she is an old lady and therefore the investigation can be conducted even without arresting her at this stage. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R. No.281/18 registered with Sarkarwada Police Station, Nashik, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each, with one or two sureties each, in the like amount.
- (ii) Applications stand disposed of accordingly.

(SARANG V. KOTWAL, J.)