

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 ANTICIPATORY BAIL APPLICATION NO.1089 OF 2020

VASANT GANGARAM BHALERAU AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. P.S. Koshti, Advocate h/f Mr. G.P. Shinde, Advocate for applicants

Mr. S.Y. Mahajan, APP for State

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21st DECEMBER, 2020.

ORDER :

1 Present applicants are apprehending their arrest in connection with Crime No.115/2016 registered with Umari Police Station, Dist. Nanded, which has been registered on the basis of directions given by learned Judicial Magistrate First Class, Umari under Section 156(3) of the Code of Criminal Procedure, 1973, on the basis of complaint lodged by Bajrang Bajirao Wadje, who is the brother of the applicant No.2. It is alleged that along with the co-accused the present applicants have committed offence punishable under

Section 420, 468, 467, 471 read with Section 34 of the Indian Penal Code.

2 Heard learned Advocate Mr. P.S. Koshti holding for learned Advocate Mr. G.P. Shine for applicants and learned APP Mr. S.Y. Mahajan for State.

3 It has been vehemently submitted on behalf of the applicants that perusal of the First Information Report would show that the dispute raised is civil in nature and would give only civil remedies or at the most remedy before the Revenue Authorities. The informant ought to have filed an appropriate suit giving challenge to the disputed documents. However, he has not done so. On the contrary, when the informant had interfered with the possession of the applicants over the land, they filed Regular Civil Suit No.84/2019 before learned Civil Judge Junior Division, Umari and the informant has been temporarily restrained from disturbing their possession by order dated 05.10.2019. Further, the co-accused have been released on pre-arrest bail by learned Additional Sessions Judge, Bhokar by order dated 24.07.2017. Perusal of the First Information Report would show that no specific allegations have been made against the applicant No.1. The FIR has been lodged only to harass the present applicants. The applicant No.2 had followed entire procedure before mutating her name to the property, and therefore, the custodial interrogation is not required.

4 Per contra, the learned APP strongly opposed the application and submitted that facts of a case may give rise to civil as well as criminal remedy and it would depend upon the facts of the case that whether the criminal case may not be the appropriate remedy. Here, in this case, admittedly the agricultural land bearing Gat No.118 situated at village Nagthana, Tq. Umari, Dist. Nanded was the ancestral property. It was admeasuring 01 H 41 R. Informant and accused No.2 are the real brother and sister. They had another brother by name Vyankati. He expired on 24.08.2005 at Civil Hospital, Nanded, at the age of 25 years. He had share to the extent of 60 R in the said land. However, a document has been created stated to have been executed on 17.07.2012 by deceased Vyankati Wadaje and which is stated to be in favour of accused No.2. That document has been produced by accused No.2 with the Revenue Authority. In other words, when Vyankati was not alive it was shown that he is alive and then the document has been got created. This would definitely gives rise to criminal remedy only. 40 R land has been shown to be given to accused No.2. Accused No.1 has helped her. They had created panchas and witnesses. Thus, a fake document has been created. The complainant had lodged complaint application with Umari Police Station on 14.11.2016. So also a complaint was filed with Superintendent of Police on 03.12.2016, but no cognizance was taken, and therefore, he filed the complaint before Judicial Magistrate First Class, Umari

and prayed for action under Section 156(3) of Cr.P.C. The said prayer was allowed and now the FIR has been registered. The physical custody of the present applicants is definitely required to gather the information as to who were those persons with whose help the document has been created.

5 At the outset, it is to be noted that no doubt one Yogeshwar Vasantrao Bhalerao appears to be the son of present applicants. Present applicants as well as their son and brother appears to have filed the suit bearing Regular Civil Suit No.84/2019 against the informant and others. The copy of the application Exh.5 does not absolutely say the date of death of Bajrang Wadaje. On the contrary, it has been stated that the plaintiff No.1, who is the son of present applicants had received the property from plaintiff No.4 i.e. present applicant No.2 on 04.06.2016. Plaintiff No.2 has also received the disputed property. Plaintiff No.3, who is applicant No.1 herein, has received the property on 03.07.2016 and the plaintiff No.4 is stated to have received the property on 11.08.2016 vide mutations. There is absolutely no whisper about execution of any partition deed in the said application Exh.5. Perusal of the order of temporary injunction would also makes no mention about the execution of a document on 17.07.2012. The investigation papers, especially stamp, which is stated to be executed on 14.08.2012. It appears that the present applicant No.1 had purchased the

stamp for the same on 24.08.2012 is stated to have been executed by Vyankati Bajirao Wadaje in respect of Gat No.118 to the extent of 60 R in favour of the present applicant No.2. Signatures of some other persons have also been taken including one thumb impression. The contents of the document, which is styled as “Watnipatrak”, show that this Vyankati was giving 60 R land to applicant No.2. On the basis of the said document it appears to be a fake document, as there could not have been a partition only amongst one brother and sister and the present applicant No.2 has been stated to be “वाटणीपत्र लिहून घेणार” and Vyankati has been shown as “वाटणीपत्रक लिहून देणार”. It is on stamp paper of Rs.100/-. It cannot be also considered as Relinquishment Deed as it is not registered. The biggest fact is to be noted is that the document i.e. Death Certificate, which has been provided by the Medical Officer, Civil Hospital, Nanded as well as from the Municipal Corporation, Nanded, would show that Vyankati had expired on 24.08.2005 itself. Definitely the document appears to be fake. The said document styled as “Watnipatrak” appears to have been used by the applicants to get their names mutated as orders from Tahsildar, Umari have been taken on the basis of that document. Though the said document has been got executed on 17.07.2012 or 14.08.2012 by purchasing stamp on 24.08.2012, the mutation has been effected on 11.08.2016. In his complaint the complainant has stated that he had made a written complaint with police on 14.11.2016.

Therefore, there was absolutely no inordinate delay in lodging the complaint. However, since the police did not take action, complaint under Section 156(3) has been filed and then it was allowed resulting in lodging of the FIR on 15.12.2016. It also appears that till today the present applicants have successfully avoided their arrest, though their co-accused were released on pre-arrest bail on 24.07.2017. It will not be out of place to mention here that the present applicants were also party to the same application i.e. Miscellaneous Criminal Application No.49/2017. By the same order dated 24.07.2017 the prayer to release the present applicants was rejected. They have again approached the learned Additional Sessions Judge on 24.01.2020 by filing Miscellaneous Criminal Application No.13/2020 for releasing them on anticipatory bail. On this count it is stated that since it was secondary anticipatory bail, there was no change in the circumstance, as well as the fact that the applicants have successfully avoided their arrest uptill now, they do not deserve any kind of sympathy. Their application deserves to be rejected. Accordingly, it is rejected.

(Smt. Vibha Kankanwadi, J.)