

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.159 OF 2020

Chaya Tukaram Bhoi	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. R. A. Deshmukh, Advocate for applicant.
Mr. V. M. Kagne, APP for respondent – State.

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WITH
ANTICIPATORY BAIL APPLICATION NO.145 OF 2020

1. Suhas s/o Navnath Suryawanshi	
2. Shriram s/o Shankarrao Dhole	... Applicants
Versus	
The State of Maharashtra	... Respondent

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Mr. B. A. Darak, Advocate for applicants.
Mr. V. M. Kagne, APP for respondent – State.

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WITH
ANTICIPATORY BAIL APPLICATION NO.154 OF 2020

Amir Mohd. Shaikh	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. V. D. Salunke and Mr. Mayur V. Salunke, Advocates for applicant.
Mr. V. M. Kagne, APP for respondent – State.

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CRIMINAL APPLICATION NO.666 OF 2020
IN
ANTICIPATORY BAIL APPLICATION NO.145 OF 2020

Pandit Tukaram Doiphode	... Applicant
Versus	
1. Suhas s/o Navnath Suryawanshi	
2. Shriram s/o Shankarrao Dhole	

3. The State of Maharashtra ... Respondents

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Mr. P. V. Ambade, Advocate for applicant – original informant.

Mr. B. A. Darak, Advocate for respondent Nos.1 and 2.

Mr. V. M. Kagne, APP for respondent No.3 – State.

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CRIMINAL APPLICATION NO.636 OF 2020

IN

ANTICIPATORY BAIL APPLICATION NO.154 OF 2020

Pandit Tukaram Doiphode

... Applicant

Versus

1. Amir Mohd. Shaikh

2. The State of Maharashtra

... Respondents

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Mr. P. V. Ambade, Advocate for applicant – original informant.

Mr. V. D. Salunke and Mr. M. V. Salunke, Advocates for respondent No.1.

Mr. V. M. Kagne, APP for respondent No.2 – State.

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CRIMINAL APPLICATION NO.773 OF 2020

IN

ANTICIPATORY BAIL APPLICATION NO.159 OF 2020

Pandit Tukaram Doiphode

... Applicant

Versus

1. Chaya Tukaram Bhoi

2. The State of Maharashtra

... Respondents

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Mr. P. V. Ambade, Advocate for applicant – original informant.

Mr. R. A. Deshmukh, Advocate for respondent No.1.

Mr. V. M. Kagne, APP for respondent No.2 – State.

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CORAM : SMT. VIBHA KANKANWADI, J

DATE : 06-01-2021

COMMON ORDER :

. Applicants in all anticipatory bail applications are apprehending their arrest in connection with Crime No.6 of 2020 dated 04-01-2020 registered

with Tuljapur Police Station, District Osmanabad for the offences punishable under Sections 420, 468, 471 read with Section 34 of Indian Penal Code and, therefore, they have filed present anticipatory bail applications under Section 438 of the Code of Criminal Procedure.

2. All the applicants are the government employees serving with the office of Land Records at Tuljapur.

3. Heard learned Advocate Mr. R. A. Deshmukh, learned Advocate Mr. B. A. Darak, Mr. V. D. Salunke for applicants in respective anticipatory bail applications, the learned APP Mr. V. M. Kagne for respondent – State well assisted by learned Advocate Mr. P. V. Ambade representing original informant.

4. All the learned Advocates for applicants submitted that perusal of the FIR lodged by one Pandit Tukaram Doiphode, who was the Deputy Superintendent of Land Records serving at Tuljapur office since 01-11-2017, would show that though he is stated to have been serving from the said date, yet, he could reveal the alleged act of unauthorized changes in the land records and preparation of false document, only after the inspection of his office which was conducted on 02-01-2020 by the District Superintendent of Land Records, Osmanabad. This itself is a doubtful fact.

5. The applicant in Anticipatory Bail Application No.159 of 2020 says

that she was appointed as a Peon in the year 1995 and thereafter, she has been promoted on 22-09-2019 from the post of Class-IV to Class-III as Maintenance Surveyor at Tamalwadi. She was serving at Sajja Tamalwadi till her suspension on 17-01-2020. She has not committed any offence. In fact, as a part of her job, she has sent the proposals for mutation entries to the superior from time to time. Her role is restricted to only three mutation entries i.e. ME Nos.132, 234 and 6. None of those persons concern with the mutation entry have made any kind of grievance. She was not the authority to sanction the mutation entry. The physical custody of the applicant is not required for the purpose of investigation.

6. Learned Advocate representing the applicants in Anticipatory Bail Application No.145 of 2020 submitted that applicant No.1 was serving as Office Superintendent since 25-05-2017 at Tuljapur office. Thereafter, he was transferred from Tuljapur to Ashti office on 31-05-2019. In fact, the informant was earlier junior to him, but in view of reservation, the informant was promoted to the post of Deputy Superintendent of Land Records and, therefore, he had grudge against the applicant. He was searching for opportunity to take revenge. He was not a responsible officer to take the mutation entries. Only vague allegations have been made in the FIR regarding the mutation entries and none of the beneficiaries or affected persons had ever raised any kind of grievance in respect of the entries those have been taken. One Mr. Sanjay Yadav (Mali) who is resident of Tuljapur, is the agent to help the persons for obtaining

Property Register Card, necessary mutation entries etc. and he is very much close to the informant. The informant has issued city survey record illegally through this person and this is the reason behind lodging the report. As regards applicant No.2 – Shriram Dhole is concerned, it is stated that he was the then Maintenance Surveyor of Sajja Tamalwadi. He had only forwarded the applications for mutation to the superior and has not taken any part in the act of sanction.

7. The applicant in Anticipatory Bail Application No.154 of 2020 submits that he is holding the post of Nimtandar in the office of Land Records at Tuljapur since 27-04-2018, after his promotion from the post of clerk. It is also submitted by the learned Advocate for the applicant that during the pendency of the application, the applicant has retired. It is his say also that he is the bottom level authority, who was not authorized to sanction any entry. He has not played any kind of role.

8. All the learned Advocates for the applicants submitted that it was the informant who was responsible to discharge duty as Deputy Superintendent of Land Records and it appears from the record that he had allowed applicant – Suhas Suryawanshi to sign the documents and pass necessary orders. The informant was responsible to submit monthly report in respect of the duty, in respect of sanctioning of mutation entries and accordingly, he has submitted

periodical reports. He cannot claim ignorance about what was going on in his office since 01-11-2017 to 02-01-2020. Even a submission was made before the learned Additional Sessions Judge that the investigation may also require to be made in respect of role played by the informant and he may also be arrayed as accused. Now, with ulterior motive, he is opposing the applications. As all the documents are with the office of Land Records, the physical custody of the applicants is not required. All of them have canvassed for pre-arrest bail.

9. Per contra, the learned APP well assisted by learned Advocate representing the cause of informant strongly objected the applications. At first place, it was informed to this Court that unfortunately the informant has committed suicide about 2-3 days ago. He was also facing a departmental inquiry. Now, as regards the contentions in the FIR are concerned, the informant has given in detail as to which role has been played by which accused in preparation of a particular document. In fact, though the informant had taken charge on 01-11-2017, yet, accused No.1 – Suhas Suryawanshi was exercising the powers of Deputy Superintendent of Land Records and sanctioning entries and issuing documents. The others in furtherance of their common intention were submitting their proposals only to accused No.1. Though many mutation entries have been sanctioned by a person, who had no authority, ultimately the public at large is the sufferer and, therefore, custodial interrogation is necessary. So also, when illegal activities have been done by the government officials, they

do not deserve discretionary relief.

10. Perusal of the FIR would show that the informant has tried to contend that though he had taken charge of the post of Deputy Superintendent of Land Records, Tuljapur on 01-11-2017, it was brought to his notice on 02-01-2020 by the inspection party of the District Superintendent of Land Records, Osmanabad, that there are many illegalities and irregularities committed in sanctioning entries and issuing documents. This fact, in fact, shows that the informant had no control over his own office and was not aware about what day to day activities were going on through his office. It is very much surprising for which he cannot hold somebody else responsible. After waiting for a reasonable period, when he could see that accused No.1 was not handing over him the charge, he could have reported the said fact to his superiors and also the fact that he could not have allowed accused No.1 – Suhas Suryawanshi to discharge the duties, which are meant for the post of Deputy Superintendent of Land Records. The informant who is assisting learned APP has not produced any such document which would show that any such step was taken during the said period on 01-11-2017 by him.

11. Except accused No.1, as regards the other accused persons are concerned, they were not the officers who could sanction the entries. They had the duty to receive the applications for effecting entry and forward it to the

appropriate authority and it is stated that after the sanction by the said authority, the documents were issued i.e. the mutation entries were sanctioned and then issued to the concerned persons from the office of Deputy Superintendent of Land Records.

12. As regards the role played by accused No.1 is concerned, definitely, it is expected that he should have the knowledge that who is the authority, who can sanction those entries. Unless there would have been a delegation of authority to him by all permissible and legal mode, he could not have discharged that duty. Therefore, there appears to be some element in the allegations those have been levelled against him. Therefore, his prayer for releasing him on pre-arrest bail will have to be rejected. He is not deserving the discretionary relief under Section 438 of the Code of Criminal Procedure, which has to be sparingly used.

13. As regards the other applicants are concerned, at the cost of repetition, it can be said that they have forwarded those proposals to the superior and at this stage, there is nothing on record to show that there was a common intention between them and accused No.1. Hence, their applications deserve to be allowed. Hence, the following order :-

ORDER

I) Anticipatory Bail Application No.145 of 2020 is hereby partly allowed.

- II) Anticipatory Bail Application Nos.154 of 2020 and 159 of 2020 stand allowed.
- III) In the event of arrest of applicants in respective anticipatory bail applications viz. (i) Chaya Tukaram Bhoi, (ii) Shriram s/o Shankarrao Dhole and (iii) Amir Mohd. Shaikh in connection with Crime No. 6 of 2020, registered with Tuljapur Police Station, District Osmanabad for the offences punishable under Sections 420, 468, 471 read with Section 34 of Indian Penal Code, they be released on P. R. and S.B. of Rs.15,000/- each.
- IV) The prayer of applicant No.1 – Suhas Suryawanshi in Anticipatory Bail Application No.145 of 2020 stands rejected.
- V) The applicants shall not tamper with the evidence of the prosecution in any manner. They should cooperate with the investigation.
- VI) The applicants shall remain present before the Investigating Officer on every Sunday between 10.00 a.m. to 12.00 p.m. till filing of charge-sheet.
- VII) They shall not indulge in any criminal activity.
- VIII) Criminal Application Nos.666 of 2020, 363 of 2020 and 773 of 2020 for assist to public prosecutor, are hereby allowed and disposed of.

[SMT. VIBHA KANKANWADI, J.]

scm