

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.123 OF 2021

PADAMSING S/O HIRASING RAJPUT
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. V.D. Salunke
APP for Respondent/State: Mr. S.W. Mundhe
Advocate for Assist to APP : Mr. Santosh S. Dambe

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CORAM : MANGESH S. PATIL, J.

DATE : 24.02.2021

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure as the applicant is apprehending his arrest in connection with Crime No.142/2020 registered with Soygaon Police Station, District Aurangabad for the offence punishable under Sections 409, 419, 420, 465, 468, 471 read with Section 34 of the Indian Penal Code to which subsequently Section 120-B of the Indian Penal Code has been added.

2. In substance, the allegations as can be made out from the FIR and the papers of the Investigation are to the effect that one Jankiram Abaji Auti was the original owner of the land Survey No.45 which was subsequently converted as Gat No.64 of Village Varkhedi. The informant's father purchased it under a Registered Sale Deed dated 04.10.1975. He then alleges that the applicant claiming to have purchased it under a registered Sale Deed No.572/2020 dated 29.05.2020 got his name mutated in the Revenue Record. He alleges that in fact the original owner Jankiram Abaji Auti has died way back on 09.07.1977. There was no question of any such sale taking place. He therefore alleges that the applicant along with the other accused including the Sub-Registrar acting hand in gloves have indulged in forgery and cheating.

3. The learned advocate for the applicant Mr. Salunke would submit that the applicant is innocent. He points out from the copy of the Sale Deed under which he purchased the land that the person claiming himself to be Jankiram Abaji Amte was very well present before the Sub-Registrar. His photo is also annexed against his name under the Sale Deed. The applicant had parted with a huge sum of Rs.22,00,000/-. One Pathan was the mediator through whom he had agreed to purchase the land. The name of Jankiram Abaji was appearing in the Ownership Column of the 7/12 extract. Name of the informant or his father was not appearing anywhere and under *bona fide* belief that Jankiram Abaji Amte was the owner, through the mediator Pathan, he purchased the land by parting huge sum. In fact he is also a victim of the alleged fraud. He is ready to cooperate the Investigating Officer. There is nothing to be discovered by or recovered from him. He is not a criminal. In fact he is an illiterate who has succumbed to the fraud.

4. The learned APP assisted by the learned advocate for the original informant opposes the Application. He submits that it is a clear case of forgery and cheating. It is a fact that a sale deed which is not signed by the executant has been registered by the Sub-Registrar concerned who has also been made an accused. Jankiram Abaji Auti the real owner has died long back and perhaps by resorting to impersonation and taking advantage of similarity in the name of the person, some person was made to stand before the Sub-Registrar and the Sale Deed is got registered and on that basis even a mutation has been effected. All these circumstances clearly indicate that there is a deep rooted conspiracy in indulging into the forgery. Presence of the applicant for custodial interrogation is necessary. He would be the best person to tell as to whom had he paid the money, if really it was, who was the person who was present before the Sub-Registrar whose photograph is annexed to the Sale Deed. All such information can be solicited only from him and the offence being serious the Application be

rejected.

5. I have carefully gone through the papers of the investigation. *Ex facie* it is clear that since long the revenue record of the land stands in the name of Jankiram Abaji Auti. There is a death certificate of that person along with his photograph in the papers of the investigation showing that he died in the year 1977. If such is the state of affairs, *prima facie* it is quite apparent that the Sale Deed could not have been executed at all since the original owner was already dead.

6. As can be seen from the copy of the registered Sale Deed one person by name Jankiram Abaji Amte stated to be aged 72 years, resident of Bidkin, Taluka Paithan is shown to be the executant. Though a photograph appears against his name, conspicuously there is no signature against his name. Similarly, even in Form No.61 his signature does not appear. Importantly the Sale Deed bears the signature of the applicant along with his photograph and also the signatures of the attesting witnesses with their respective photographs.

7. There are statements of these attesting witnesses stating that they had merely on a request being made by the applicant were present in the office of the Sub-Registrar and have put their signatures at the places having been asked by the Sub-Registrar Mr. Narwade who is also a co-accused.

8. It is indeed surprising that a sale deed has been registered without there being any signature of the executant and even the mutation has taken place on that basis. There is enough room to infer that the mischief has been played by hatching some sort of conspiracy. Though Jankiram Abaji Amte was not the owner, by taking advantage of similarity of name, he was shown to be the executant and the Sale Deed was got registered.

9. It is the applicant who would be the best person to identify said Jankiram Abaji Amte who was present before the Sub-Registrar and whose photograph appears against his name. He would be the best person to tell to whom he states to have paid the huge amount of Rs.22,00,000/-. All such investigation can be had only by resorting to his custodial interrogation.
10. Considering the *modus operandi* and all the aforementioned facts and circumstances, the applicant is not entitled to anticipatory bail.
11. The Application is rejected.

(MANGESH S. PATIL, J.)