

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 286 OF 2021

Shaikh Taher s/o Bapu Miyan ...Applicant

Versus

The State of Maharashtra ...Respondent

...

Advocate for the Applicant : Ms. A. N. Ansari
APP for the Respondent – State : Mr. S. B. Narwade
Advocate for informant to assist APP : Mr. S. S. Kazi

...

CORAM : PRAKASH D. NAIK, J.

DATE : 08th OCTOBER, 2021

PER COURT :-

1. This is an application for anticipatory bail in Crime No.02/2021 registered with Dharmabad Police Station, District Nanded for the offences punishable under Sections 420, 468, 471, 34 of the Indian Penal Code. The First Information Report was registered on 01.01.2021.

2. The complaint was lodged by Hidayatulla Inamdar stating that he is a power of attorney holder of the aggrieved persons. According to him Syed Kaleem and his friend Khalidkhan had executed transaction relating to 1 Hectore 12 Guntha of land

from Gat No. 378 with Shaikh Goremiya alias Shaikh Anwar s/o Wahedali and Shaikh Khajamiya and Shaikh Abdul Raheman by paying Rs. 25,00,000/- on executing Souda Chitti on 16.04.2012. It was aggrieved between the parties that the registration was to be completed on 04.01.2013. However, the vendors were avoiding registration of document. Power of attorney was given in favour of complainant by Syed Kaleem and Khalidkhan on 23.01.2019. Since the document was not registered, the 'Bayana' amount of Rs. 25,00,000/- was demanded, but it was not returned. Subsequently, it was revealed that the original owner of land was Waheeda Begum Babumiya who died on 20.06.2006. It is alleged that although the owner of land, Rajiya Begum Bashumiya impersonated owner Waheeda. Rajiya Begum was shown to be Waheeda (owner). The accused prepared fabricated documents such as identity card, obtained false residence certificate from the Grampanchayat, Siraskhod and on that basis Shaikh Taher Babumiya, Shaikh Abdul Raheman executed sale-deed No. 276/2013 in respect to properties of Waheeda Begum on 28.02.2013 for an area of 60 gunthas. Similar transaction was also attributed in respect to sale-deed No. 274/13 with one Hyder. The applicant and others had acted as witnesses on the sale-deeds which indicated that they had identified the

purported owner. Rajiya Begum appeared before Sub-Registrar to show that Waheeda is alive. There were three sale-deeds bearing Nos. 272/2013, 274/2013 and 276/2013. All the accused was acted in connivance with each other.

3. The applicant had preferred application for anticipatory bail before the Court of Sessions which has been rejected by order dated 21.01.2021. The application was opposed by State as well as the complainant by filing affidavit-in-reply.

4. Learned Advocate for the applicant submitted that Bashumiya had two wives namely Waheeda Begum alias Rajiya Begum and Bismilla. Reliance is placed on the ration card of Bashumiya. Bismilla Bashumiya died and Waheeda begum alias Rajiya Begum is alive. Rajiya Begum is the same lady. There is no impersonation. Reliance is placed on the marriage certificate and the will-deed. It is further submitted that the persons to whom the properties were sold are in possession of property and they are enjoying possession of said property. The complainant is allegedly power of attorney holder. He has no right to file any complaint. The civil suit has been filed by the complainant in the Civil Court seeking prayer for performance of the transaction. Application for injunction

was moved before the competent Court which has been refused. The civil suit was thereafter dismissed for want of prosecution in the year 2016. The application for restoration of the said suit preferred in 2020 which is pending before the concerned Court. The custodial interrogation of the applicant is not necessary. He is neither seller nor purchaser of the property. He is not beneficiary of the transaction. Bismilla Bashumiya died in 2006 and by mistake name of Waheeda was written in the Death Certificate. The applicant is willing to co-operate with the investigation. The entire matter relates to documents. The FIR was lodged related hence relief under Section 438 of IPC may be granted to the applicant.

5. Learned APP submitted that the applicant has participated in the offence. The death certificate of Waheeda Begum Bashumiya shows that she died on 20.06.2006. Three transactions were executed by the accused. Although the applicant has signed as a witness on the documents, he was instrumental in executing the transactions. The statements of the persons with whom the sale-deeds were executed are recorded. They have referred to involvement of applicant. The statement of the office bearer of the grampanchayat is also recorded. The documents on record establish that the

accused were involved in impersonating Waheeda Begum Bashumiya and by making accused Rajiya Begum to impersonate Waheeda Begum, the documents were executed. Custodial interrogation of the applicant is necessary.

6. Learned Advocate for the complainant adopted submissions of learned APP. It is submitted that the documents on record itself indicate that the Waheeda Bee Bashumiya has expired on 20.06.2006. The investigation has revealed that accused had acted in connivance to each other. The complaint is filed on behalf of Syed Kaleem and Khalid khan on the basis of power of attorney. The record also indicate that residence certificate and the identity card was prepared by the accused which was utilized for impersonating Waheeda Bee Bashumiya. The offence is of serious nature. The transactions were executed on the basis of fabricated documents. The applicant is not merely the witness to the document. He has played an active role in the transactions. Hence the custodial interrogation of the applicant is necessary.

7. I have perused the documents on record including FIR. The case of the complainant as stated above, is that Kaleem

who is the cousin of the complainant and Khalid khan had executed transaction related to the property which is part of gut No.378 to Shaikh Goremiya alias Shaikh Anwar s/o Wahedali and Shaikh Khajamiya. Sale-deed was not registered. It is pertinent to note that the said transaction was executed in 2012. The grievance of the complainant is that the sale-deed was not registered inspite of request made to the seller. It is also relevant to note that the complainant had initiated civil proceedings before the Civil Court seeking performance of the transaction. In the said civil suit the application for injunction was preferred by the complainant. In the said application the complainant has sought relief such as not to create third party interest in the property etc. The application was rejected vide order dated 23.05.2016. In the said order the Court had observed that the suit was filed after about three years from the last day of the time period mentioned in agreement dated 05.05.2012. The plaintiff has not explained as to why the notice of termination of said agreement issued by the defendants therein was not challenged. The plaintiff have not given any explanation as to why the said agreement was not renewed. After termination of the said agreement by defendants, if the defendants would not have been in possession of the suit land they would have certainly filed civil

suit for recovery of possession of the suit land from plaintiffs. The applicant was impleaded as one of the defendant in the suit. During the course of investigation several statements as stated above were recorded by the investigating agency. It is pertinent to note that the statements are recorded in the year 2021. The claim of the applicant is however that there is no impersonation and that the owner is still alive. Reliance is placed on the documents such as will deed, marriage certificate, ration card etc. Thus the dispute is about whether the co-owner was alive or dead, and there was impersonation. The entire matter relates to the documents which are already in possession of the investigating agency.

8. Considering the factual matrix of this case, the custodial interrogation of applicant is not necessary.

ORDER

(i) Anticipatory Bail Application No. 286 of 2021 is allowed.

(ii) In the event of arrest of the applicant in Crime No.02/2021 registered with Dharmabad Police Station, District Nanded, the applicant be released on bail on executing PR bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) with one or more sureties in the like amount.

(iii) The applicant shall appear Investigating Officer on 20th, 21st and 22nd October, 2021 between 11.00 a.m. to 01.00 p.m. and thereafter, as and when called for.

(iv) Application stands disposed of.

(PRAKASH D. NAIK)
JUDGE

shp/-