

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

ANTICIPATORY BAIL APPLICATION NO.561 OF 2020

Prakash Rangnathappa Katkar
Age 57 years, Occ-Business.
R/o Hanuman Ghat, Jalna,
Tq. and Dist.Jalna

.. APPLICANT

VERSUS

The State of Maharashtra
Through Police Station Officer,
SB Jalna Police Station,
Dist.Jalna

.. RESPONDENT

....

Advocate Miss Pradnya Talekar (Talekar & Associates) for applicant
A.P.P. Shri V.M.Kagne for respondent State.
Adv.Shri M.S.Sonawane to assist to A.P.P.

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ANTICIPATORY BAIL APPLICATION NO.562 OF 2020

Rangnathappa Tukaramappa Katkar
Age 93 years, Occ-Business.
R/o Hanuman Ghat, Jalna,
Tq. and Dist.Jalna

.. APPLICANT

VERSUS

The State of Maharashtra
Through Police Station Officer,
SB Jalna Police Station,
Dist.Jalna

.. RESPONDENT

....

Advocate Miss Pradnya Talekar (Talekar & Associates) for applicant
A.P.P. Shri V.M.Kagne for respondent State.
Adv.Shri M.S.Sonawane to assist to A.P.P.

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CORAM : MANGESH S. PATIL, J.
RESERVED ON : 02.02.2021
PRONOUNCED ON : 23/02/2021

ORDER :-

These are applications under Section 438 of the Cr.P.C. seeking bail in the event of arrest of the applicants in connection with Crime No.96/2020 registered with Sadar Bazar Police Station, Dist.Jalna for the offences punishable under Sections 420, 468, 471 read with Section 34 of the I.P.C.

2] The sum and substance of the allegations, as can be discerned from the F.I.R. and the papers of the investigation, are to the effect that the land survey No.173 of Jalna is an Inam land governed by the provisions of Hyderabad Inam Abolition and Cash Grants Act, 1959. It has been vesting in the Government. One Devidas Vishwanath and Ambadas Vishwanath were the occupants of the land. It was a Class-II category land which connotes that the ownership of the State would continue and the occupant would only be entitled to possess and cultivate it. It does not constitute absolute ownership or title which continues to vest in the Government. Consequently there is absolute bar to sell the property of this kind except by seeking necessary permission of the competent authority and by paying the occupancy price called Nazrana. It is alleged that without seeking permission and paying any Nazrana, the applicant Rangnathappa (Anticipatory Bail Application No.562/2020) and his brother Laxmanappa purchased it from the original occupant Devidas Vishwanath and Ambadas Vishwanath by registered sale deed in the year 1971. Names of Devidas and Ambadas were mutated by

Mutation Entry No.267 to the extent of 16 Acres 2 Gunthas. After execution of sale deed in favour of applicant Rangnathappa and Laxmanappa by the Mutation Entry No.547 their names were mutated. It is then alleged that without there being any permission of the competent authority they further sold away property without paying any Nazrana. It is then alleged that even the informant and few other persons had purchased a portion of that land since the revenue record did not mention that it was Class-II category. They could get the respective sale deeds regularised by paying Nazrana charges to the tune of lakhs of rupees under the enabling provision contained in Section 42A of the Maharashtra Land Revenue Code, 1966.

3] The informant further alleges that though he and few other purchasers could get regularised their sale deeds, applicant Rangnathappa and Laxmanappa in collusion with applicant Prakash who happens to be the son of Rangnathappa and few other purchasers of the remaining portion of the land got sanctioned the lay out plan, property cards were also opened and they sold away these plots to various persons, however, in doing so, they failed to seek prior permission of the competent authority and even failed to pay any Nazrana and managed to get non agriculture permission and layed out the plots. It is alleged that by resorting to forgery and fabrication and using the record regarding payment of Nazrana by the informant and other purchasers whose sale was regularised, the applicants and Laxmanappa dishonestly and fraudulently obtained N.A. permission, layed plots and sold them away to various persons. In doing so, forged documents were created by using stamps of the Government offices.

4] The learned advocate Miss.Talekar for the applicants would submit that

litigation has been going on before the revenue authorities regarding class of the land. There was no occasion to cheat the Government by not depositing Nazrana. The dispute as regards liability of the applicants to pay it is a subject matter of a proceeding before the revenue authority. The Divisional Commissioner has never concluded about the land being Class-II category. None of the ingredients for the offences punishable under Sections 420, 468 and 471 of the I.P.C. can be made out. Applicant Prakash is neither the occupant/owner nor is he a Power of Attorney Holder of the original occupant owners and therefore there is no question of his being involved in the crime. So far as applicant Rangnathappa is concerned, the land was never Class-II category of land which was absolutely owned by Rangnathappa and Laxmanappa. In the year 2008 itself Tahsildar, Jalna had certified that it was not Class-II category land. They were served with a notice dated 8/1/2016 as to why the Nazrana be not recovered from them since the land was Class-II category and they had purchased it without permission. They submitted a reply and the dispute as to the category of the land is subjudice before the revenue authorities. Applicant Rangnathappa also undertook to pay necessary Nazrana if the land was found to be Class-II category.

5] She further submitted that some portion of the land was purchased by the informant and one Ghansham Goel who were also served with a similar notice. In September 2017, applicant Prakash filed an F.I.R. against these 2 persons for indulging in forgery and grabbing some portion of the land which continued to remain with Rangnathappa. The offence was registered on the basis of that F.I.R. She would submit that the applicants applied for N.A. permission in the year 2017. They never used any forged document. Even in that proceeding it was their stand that the land was a Class-I category and not

Class-II category and therefore, they were not liable to pay any Nazrana. They have not indulged in any forgery or cheating. Applicant Rangnathappa is more than 90 years of age. Considering the nature of investigation to be done his custodial interrogation is not necessary. The ad-interim relief granted to the applicants be confirmed.

6] The learned A.P.P. strongly opposed the application. He submitted that it is a matter of record that the land survey no.173 is a Class-II category land. Without seeking permission of the competent authority and without paying Nazrana applicant Rangnathappa and Laxmanappa purchased it illegally. They have further illegally sold different portions of the land by obtaining N.A. permission by indulging in forgery and has duped the Government of the revenue. He would point out from the old revenue record that originally it was indeed shown as a Class-II category land. At this stage such old revenue record *prima facie* supports the allegation about the land being Class-II category and still applicant Rangnathappa and his brother Laxmanappa purchased it without seeking prior permission of the competent authority and without paying Nazrana. He would further submit that at this stage this much of material is sufficient to draw inference that by resorting to forgery and perhaps hand in gloves with some revenue officials applicant Rangnathappa and Laxmanappa could manage to get the Mutation Entry certified and sold the properties initially to the informant and one Goel and others and even thereafter managed to get the N.A. permission in respect of remaining land and sold away the plots. It is, therefore, not a matter which is being *bona fide* fought before the revenue authorities. It is therefore, a clear case of forgery and cheating which needs to be investigated by resorting to custodial interrogation of both the applicants.

7] I have carefully gone through the papers of the investigation. It is a matter of record that the old revenue record *ex facie* confirms the fact that the land survey No.173 was an Inam land which was granted to the original occupants. There is also no dispute about the fact that applicant Rangnathappa and his brother Laxmanappa purchased it from the original occupants without there being any permission of the competent authority and further sold it away in bits and pieces to various persons including the informant and Ghanshamdas Goel. Mutation Entry No.267 records an entry to this effect in favour of the original occupants to whom it was subsequently granted with limited right meaning thereby that it was Class-II category land. There is also record to show that subsequently by Mutation Entry No.547 it was recorded in the name of Vishwanathappa and Laxmanappa. Therefore, at this juncture, this much of material is enough to draw an inference that land Survey no.173 is a Class-II category land and could not have been sold except by obtaining necessary permission from the competent authority and by paying necessary Nazrana to the State Government.

8] It appears that initially some portion of the land survey no.173 was sold by Vishwanathappa and Laxmanappa to one Ghanshamdas Chunnilal Goel, the informant and few other persons. It appears that like Vishwanathappa and Laxmanappa even these purchasers were served with a notice calling upon them as to why necessary Nazrana with a penalty be not recovered from them for having purchased their respective portions without prior permission and without paying Nazrana. It is also a matter of record that pursuant to such notice, these purchasers paid Nazrana and got regularised their respective transactions. However, Rangnathappa and Laxmanappa contested

the claim and the matter is subjudice before revenue authorities.

9] It appears that the then Tahsildar by his order dated 16/5/2009 directed to delete entry from the revenue record of the land to be of restricted ownership i.e. a Class-II category and it is thereafter the applicants and Laxmanappa seem to have obtained N.A. permission and sold away the plots to few other persons without seeking prior permission of the competent authority and without paying any Nazrana.

10] It is also a matter of record that the dispute as to if the land is Class-I category or Class-II category has been going on before revenue authorities, the Divisional Commissioner has confirmed the finding of the Collector holding it to be Class-I category albeit he simultaneously confirmed the fact of Ghanshamdas Goel and the informant having paid necessary Nazrana and got regularised their respective purchases regularised. Much emphasis has been laid by the learned advocate for the applicants on this aspect. However, admittedly it was originally only one piece of land bearing Survey no.173 and the purchasers of half portion were called upon and paid Nazrana for regularising their respective purchases. Therefore the observation and conclusion by Divisional Commissioner that the remaining half portion which continued to be in the name of Rangnathappa and Laxmanappa could become without any such statutory restriction and would constitute a Class-I category land is rather surprising. Therefore, no reliance can be placed on the conclusion of the Divisional Commissioner confirming the order of Collector that the remaining half portion would not come under Class-II category.

11] Taking into account the papers of the investigation it appears that on

the basis of the record showing Nazrana to have been paid by purchasers Ghanshamdas Goel, informant and others for regularising their respective purchases the concerned Tahsildar overlooking the fact that these persons got regularised their respective purchases which were to the tune of half of the land issued a certificate that the land no longer continued as Class-II category land and taking benefit of that certificate the applicants managed to obtain N.A. use permission, layed plots and sold them away. The question would be as to if such events would constitute an offence of cheating and forgery. It seems that there is a possibility of the concerned Tahsildar having not realised the fact that the regularisation of the purchase transactions was only in respect of half of the land. Had he realised this aspect he could not have issued the certificate observing that the entire land Survey no.173 was of unrestricted category. Even the matter could have been gone into and investigated by superior revenue authorities if there was an opportunity to them to note this sequence of events.

12] Considering all the aforementioned facts and circumstances, custodial interrogation of the applicants does not seem to be imperative. Bearing in mind the principles laid down in the cases of **Siddharam Satlingappa Mehetre vs. State of Maharashtra and Others (2011) 1 Supreme Court Cases 694** and **Sushila Aggarwal V/s State (NCT of Delhi) and another; (2020) 5 S.C.C. 1,** this is a fit case where the applicants deserve to be granted anticipatory bail.

13] It is further pertinent to note that the applicants have been granted ad-interim anticipatory bail on 10/7/2020 subject to certain terms and conditions and there are no allegations about they having disobeyed the conditions.

14] The applications are allowed. The ad-interim anticipatory bail granted to the applicants stands confirmed with the same terms and conditions.

[MANGESH S. PATIL, J.]

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