

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

**CRIMINAL APPLICATION NO. 1180 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 457 OF 2021**

Satyanarayan Hiralal Bhatawale **...Applicant**

Versus

Gangaram Chotulal Bhatawale & Anr. **...Respondents**

.....
Mr. Satyajit S. Bora, Advocate for the applicant
Mr. Amit A. Mukhedkar, Advocate for respondent no. 1
Mr. S. B. Narwade Patil, APP for respondent no. 2
.....

**AND
ANTICIPATORY BAIL APPLICATION NO. 457 OF 2021**

Gangaram s/o Chotulal Bhatawale,
Age : 78 years, Occu. Business & Agriculture,
R/o. Municipal House No. 11-2-133/1,
In front of Doordarshan Kendra, Rahimpur,
Vasarni, Nanded, District Nanded. **...Applicant**

Versus

1. The State of Maharashtra & Anr. **...Respondents**

.....
Mr. Amit A. Mukhedkar, Advocate for the applicant
Mr. S. B. Narwade Patil, APP for respondent / State
Mr. Satyajit S. Bora, Advocate to assist APP
.....

**AND
ANTICIPATORY BAIL APPLICATION NO. 475 OF 2021**

1. Sherkhan s/o Sarwarkhan Pathan,
Age : 47 years, Occu. Mistry / Labourer,
R/o. In front of Doordarshan Kendra,
Vasarni, Nanded, District Nanded.
2. Janardhan s/o Damaji Aajade,
Age : 48 years, Occu. Labourer,
R/o. As above.
3. Bhagwan s/o Gunaji Ingole,
Age : 50 years, Occu. Driver,
R/o. As above.

...Applicants

Versus

1. The State of Maharashtra & Anr.

...Respondents

.....
Mr. Amit A. Mukhedkar, Advocate for the applicant
Mr. S. B. Narwade Patil, APP for respondent / State
Mr. Satyajit S. Bora, Advocate to assist APP
.....

CORAM : V. G. BISHT, J.

DATE OF RESERVING THE ORDER : 18th August, 2021
DATE OF PRONOUNCING THE ORDER : 25th August, 2021

PER COURT : -**CRIMINAL APPLICATION NO. 1180 OF 2021 : -**

1. By this application, the applicant seeks permission to assist learned Public Prosecutor.

2. For the reasons cited in the application, the same is allowed.

**ANTICIPATORY BAIL APPLICATION NO. 457 OF 2021 &
ANTICIPATORY BAIL APPLICATION NO. 475 OF 2021 : -**

3. These are applications under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No. 0093 of 2020, registered with Nanded Police Station, District Nanded for the offences punishable under Sections 420, 467, 468, 471 r/w 34 of the Indian Penal Code (in short "IPC").

4. It appears that the informant had filed OMCA No. 1293 of 2019 before the learned JMFC, Court No. 7, Nanded, wherein the learned Magistrate was pleased to pass an order under Section 156 (3) of the Code of Criminal Procedure and accordingly Crime No. 0093 of 2020 came to be registered against the present applicants for the offence under Sections 420, 467, 468, 471 r/w 34 of the IPC.

5. From the FIR, it reveals that the informant's father prior to his death had executed registered will bearing registration No. 6837/2015 and Codicil will having registration No. 678/2017 dated 09.02.2017, in respect of the agricultural land Gut No. 12/1/1 *ad measuring* 1 Hecter. After the death of informant's father, when

informant moved an application to Talathi, Sajja Vajegaon to mutate his and his brothers' name in respect of the said land, the applicant – Gangaram Chotulal Bhatawale, who is uncle of the informant, raised objection. Later on informant came to know about forged signatures of his father, false affidavit and relinquishment deed purportedly executed by the applicant. Hence the said complaint.

6. Mr. Mukhedkar, learned Counsel for the applicants, at the very outset, submits that the dispute between the parties is of civil nature for which the applicant has filed Civil Suit No. 25 of 2018 for declaration of ownership, cancellation of will and for injunction in respect of disputed land. The said suit is pending for adjudication. According to learned Counsel, the disputed land is in possession of the applicant – Gangaram Chotulal Bhatawale. Right from 1993 to 2017 no objection was taken nor mutation was ever challenged. It is only after the father of the informant's died the present complaint came to be filed. Thus, there is inordinate and unexplained delay for making complaint by the complainant. As far as other applicants i.e. Sherkhan and others are concerned, the learned Counsel submitted that they have simply signed the documents in the capacity of attesting witnesses and even otherwise no overt act is attributed on their part. For all these

reasons, the present applications deserve to be allowed, argued learned Counsel.

7. Mr. Narwade Patil, learned APP, on the other hand, vehemently opposed the submissions by contending that the documents were forged by applicant – Gangaram Chotulal Bhatawale with the help of other applicants. The learned APP also invited my attention to the Handwriting Expert's opinion which shows that the signature of the father of the informant was forged. Even the learned APP from the investigation papers invited my attention to the statement of Kondiba Baliram Tapare, which shows that he was the original owner of the disputed land and had executed sale deed in favour of Hiralal Bhatawale i.e. the father of the informant. According to learned APP, the investigation is in progress and, therefore, the present applications need to be rejected.

8. From the rival contentions of the parties, what is clear is that the will in respect of the disputed land is seriously questioned by the applicant Gangaram Chotulal Bhatawale by filing Special Civil Suit No. 25 of 2018, which is not disputed by the prosecution. Thus, essentially the dispute between the parties is purely of civil nature.

9. Even assuming for the sake of argument that documents have been forged but all those documents are in custody of investigating machinery. Even, as claimed, the handwriting expert's opinion is also lying with the investigating machinery. Since the allegations are based on the documentary evidence and the fact that all the documents are in possession of the investigating machinery and further fact that the dispute between the parties is purely of civil nature, in my considered view, there is no question of custodial interrogation.

10. As far as remaining applicants in Anticipatory Bail Application No. 475 of 2021 are concerned, they have allegedly acted as attesting witnesses to the documents. No overt act is attributed on their part. As already noted that all the necessary documents are in possession of the investigating machinery, in my considered opinion, the application of these applicants as well deserve consideration.

11. For the aforesaid reasons, I am inclined to allow the present applications. Hence, following order.

ORDER

- i. The applications are allowed.
 - ii. Interim relief granted by this Court on 25th May, 2021 in ABA No. 475 of 2021, is confirmed and made absolute in both the applications.
12. The applications for anticipatory bail stand disposed of in the aforesaid terms.

[V. G. BISHT]
JUDGE