

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 962 OF 2021

Omprakash Baguram Kutwade (Reddy)

Versus

The State of Maharashtra

...

Mr. P.P. More, Advocate for applicant,
Mr. S.B. Narwade, APP for respondent.

And

ANTICIPATORY BAIL APPLICATION NO. 965 OF 2021

Dnyanoba Tukaram Giri

Versus

The State of Maharashtra.

...

Mr. Sachin S. Panale, Advocate for applicant,
Mr. S.B. Narwade, APP for respondent.

And

ANTICIPATORY BAIL APPLICATION NO. 825 OF 2021

Shahaji s/o. Sheshrao Kamble

Versus

The State of Maharashtra.

..

Mr. P.K. Ippar, Advocate for applicant,
Mr. S.B. Narwade, APP for respondent.

CORAM : V.G. BISHT, J.

**RESERVED ON : 24TH SEPTEMBER.2021.
PRONOUNCED ON : 30TH SEPTEMBER, 2021**

PER COURT:

1] These are applications under Section 438 of Cr.P.C. preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No.0361 of 2020, registered with Police Station, MIDC, Latur for the offences punishable under Sections 420, 467, 468, 471, 387, 506, 120(B) of IPC.

2] It is the case of prosecution that informant is the owner of field Survey No. 93 and 92 (Now, Gat No. 111/1) admeasuring 9 Hectare 73 R situated at village Harangul, Taluka and District Latur. It is alleged that accused Shaikh Majhar Mohiyoddin Mukhtar Mohiuddin and Kazi Shoeb Afroz Moinoddin, prepared a false and forged sale deed on Stamp Paper of Rs. 100 showing that the informant sold them 9 Hectare 02R land from the aforesaid field by accepting consideration of Rs. 80 Lakhs on 5.10.2009. It is further alleged that the said accused used sale deed for payment of deficit stamp duty thereon in the month of February 2019. The informant came to know about this document on receiving copy thereof from the Talathi on 29.6.2019, on receiving show cause notice of mutation on the basis of said document. He accordingly lodged the FIR.

3] Mr. More, learned counsel for the applicant in Anticipatory Bail Application No. 962 of 2021, submits that his name is nowhere revealed in the FIR. It is only during the course of investigation, his name came to the surface. According to learned counsel, the applicant is a Stamp vendor and licence holder since 1982. The learned counsel then next submits that the investigation of the crime has been completed and in such circumstances, there is no question of custodial interrogation.

The learned counsel lastly submits that the applicant being a licence holder, his duty is only to issue bond paper in favour of the concerned by taking its entry in the register maintained therefor and as it reflects from the MCR Yadi that the co accused had handed over the said register of bond entry to Mazhar Shaikh, no question of recovery from him arises. The learned counsel invited my attention to MCR Yadi (Exhibit E).

4] Mr. Panale, learned counsel for the applicant in Anticipatory Bail Application No. 965 of 2021 submits that the applicant only acted as an attesting witness to the alleged sale deed dated 5.10.2009, which is already seized by the Investigating Officer during the course of investigation. Except the role of applicant being an attesting witness, there is nothing against him. The applicant is having landed property and is cultivating his ancestral land at his native village Jadhala, Taluka Chakur, Dist. Latur and thus would not flee from justice, if benefit of anticipatory bail is extended to him. Moreover, charge sheet has already been filed.

5] Mr. Ipper, learned counsel for applicant in Anticipatory Bail Application No. 825 of 2021, submits that all the relevant documents have been seized from the house of the applicant. Charge sheet is also filed. There is nothing on record to suggest that there was previous meeting of mind of this accused and other accused. Thus, the applicant deserves to be given the benefit of pre-arrest bail, argued learned counsel.

6] Mr. Narwade, learned APP on the other hand, vehemently opposed the submissions of the learned counsel for applicants. He invited my attention to the sale deed dated 5.10.2009, wherein, applicant

in Anticipatory Bail Application No. 965/2021 acted as an attesting witness knowing it fully well that the sale deed in question was forged one. The learned APP also invited my attention to the village Specimen No.9, wherein, mutation entry No. 10176/21 was effected pursuant to its production before the Tahsildar and thereafter, notice came to be issued to the informant. On receipt of the notice, the informant replied to Tahsildar informing him that the sale deed in question was totally false and forged one and, therefore, his objection be recorded in respect of the mutation entry. The learned APP further invited my attention to the order of Tahsildar, who, after hearing both the parties, cancelled the mutation entry No. 10176/2021.

7] The learned APP next submitted that Stamp Register which is in the custody of applicant in Anticipatory Bail Application No. 962 of 2021 is required to be seized and for that purpose, his custody is necessary.

8] The learned APP then lastly submits that the affidavit filed by accused Shaikh Majhar Moohiyoddin Mukhtar Mohiyoddin and Kazi Shoeb Afroj Moinoddin, wherein, applicant in Anticipatory Bail Application No. 825 of 2021, has identified them. According to them, said applicant is the beneficiary in the whole transaction and was well aware of the fact that no such real sale deed existed and still signed the forged sale deed.

9] I have also gone through the investigation papers. At the very outset, I may point out that perusal of charge sheet would show that not only the investigation is completed, but every relevant document, particularly, alleged forged sale deed has been seized by the Investigating

Officer. The whole nature of the case would suggest that the prosecution case is based totally on documentary evidence. It appears from the investigation papers that the stamp register has also been seized from the applicant in ABA No. 962 of 2021. There is no direct evidence of criminal conspiracy against the present applicants.

10] Similarly, the applicant in ABA No. 965 of 2021 appears to be an attesting witness on the sale deed. The stamp in question is already filed alongwith the charge sheet. So there remains nothing to be seized from the custody of the present applicants. If any further enquiry is required to be done, that can be done so gainfully by imposing certain conditions.

11] Lastly, all the relevant documents as far as applicant in ABA No. 825 of 2021 is concerned, are again forming part and parcel of the charge sheet. Needless to say, custody of the applicant therein also is not necessary.

12] For all the aforesaid reasons, I am inclined to allow the application with certain conditions. Hence, the following order.

: O R D E R :

[I] In the event of arrest of the applicants in connection with Crime No. 361 of 2020, registered with Police Station, MIDC, Latur for the offences punishable under Sections 420, 467, 468, 471, 387, 506, 120(B) of IPC, the applicants be enlarged on bail on their furnishing PR Bond in the sum of Rs. 20,000/- each, with one or two sureties in the like amount.

[II] The applicants shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.

[III] They shall not tamper with the evidence.

13] The application stands disposed of in aforesaid terms.

**[V.G. BISHT]
JUDGE.**

grt/-