

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 ANTICIPATORY BAIL APPLICATION NO.1058 OF 2020

NAMDEV SARJERAO SUPEKAR AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. N.B. Narwade, Advocate for applicants

Mr. A.M. Phule, APP for respondent

...

WITH

ANTICIPATORY BAIL APPLICATION NO.1060 OF 2020

RUPESH VISHNU BHAVSAR

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. R.K. Temkar, Advocate for applicant

Mr. A.M. Phule, APP for respondents

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04th JANUARY, 2021.

ORDER :

1 Both the applications are in respect of the same crime, and

therefore, they are proposed to be disposed of by this order. Applicants in both the applications are apprehending their arrest, in connection with Crime No.1186/2020 registered with Shrigonda Police Station, Tq. Shrigonda, Dist. Ahmednagar, for the offence punishable under Section 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, and therefore, they have filed present applications under Section 438 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. N.B. Narwade for applicants in Anticipatory Bail Application No.1058 of 2020, learned Advocate Mr. R.K. Temkar for applicant in Anticipatory Bail Application No.1060 of 2020 and learned APP Mr. A.M. Phule for State in both applications.

3 It has been vehemently submitted on behalf of all the applicants that the First Information Report, that has been lodged against them, is based on concocted story. They have not committed any offence. There is huge delay in lodging FIR. There is no direct or indirect or even circumstantial evidence, which would corroborate the story of the prosecution. The alleged documents are with the Revenue Authorities. The applicant No.1 in Anticipatory Bail Application No.1058 of 2020 is 85 years old person retired from Army and the other applicants therein are his sons. It was revealed from the documents that there is a family dispute. Partition had taken place

amongst them and at the most, if now, there is any dispute, it would be of civil nature, for which the informant should have knock the doors of Civil Court. Documents in the nature of affidavit sworn before Tahsildar would show that the informant had appeared before him. Now, he is disowning the said document.

4 The applicant in Anticipatory Bail Application No.1060 of 2020 is Talathi of village Nimbavi, Koregavhan and Sarola Somwanshi. He is not at all concerned with the said crime. There cannot be a conspiracy between him and the other applicants. In fact, application was filed before him along with documents and after adopting procedure he has effected the mutation entries. Those mutation entries have been certified by the Circle Officer. He cannot be the author of the Partition Deed, which is alleged to be forged document.

5 It has been submitted on behalf of the applicants that the physical custody of the applicants is not required, as the investigation would be based on the documents. The learned Advocates, therefore, prayed for pre-arrest bail.

6 Per contra, the learned APP strongly objected the applications on the ground that accused No.4 Vishal Supekar has been arrested and the

forged documents, which were produced before Tahsildar, have been recovered. Those documents would clearly show that old photograph of the informant has been affixed on that document and those documents have been forged. On the basis of those forged documents further documents have been created, such as Mutation Entries, Notice Register etc. The signatures are forged. On the basis of these forged documents land, which was belonging to the informant, has been taken in possession by the accused persons showing them as owner of the same. It is not a mere civil dispute, and therefore, physical custody of the applicants is required.

7 At the outset, it is required to be noted that the age of an accused may not be always necessary to be considered. Here, in this case, though the applicant No.1 in Anticipatory Bail Application No.1058 of 2020 is stated to be 85 years old person; yet, his role in the commission of the crime is definitely required to be considered. The informant has contended that he is the owner of 02 H 95 R land from Gat No.321 situated at village Sarola Somwanshi and 02 H 76 R from Gat No.310 situated at village Koregavhan, Tq. Shrigonda. He is ordinarily resident of Pune, and therefore, he cultivates the land by coming down from Pune. According to him, the accused-applicants in Anticipatory Bail Application No.1058 of 2020 with arrested accused Vishal Namdev Supekar have prepared various false

documents and with the help of Talathi as well as Circle Officer huge land has been got mutated in the name of the accused Nos.1 to 4. The informant says that he has not executed any affidavit or has not given any document in favour of those persons. Various documents have been collected during the course of investigation, which appear that even the Talathi is part of the transactions. Though he says that ultimately the mutations have been certified by the Circle Officer, it can be seen that it would be the part of Talathi's job to issue notice and after the entire procedure has been followed he should take entry. Under such circumstance, thorough investigation is definitely required. One transaction may give rise to civil as well as criminal remedy. But when it comes to creation of false record, it cannot be solely civil remedy only. No case is made out to use extraordinary power of this Court under Section 438 of the Code of Criminal Procedure, and therefore, both the applications deserve to be rejected. Accordingly they are rejected.

(Smt. Vibha Kankanwadi, J.)

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