

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1190 OF 2021

Vinayak Uddhavrao Pandit
Age : 60 years, occ : Notary
R/o Plot No. 98, Deogori Colony,
N-2, CIDCO, Aurangabad

Applicant

Versus

The State of Maharashtra.

Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1153 OF 2021

Gautam Arjun Borde
Age : 42 years, occ : Advocate
R/o Shinde Galli, Padegaon,
Taluka and District Aurangabad

Applicant

Versus

The State of Maharashtra.

Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1158 OF 2021

1. Raising Khemchand Harne
Age : 70 years, occ : agri.,
R/o Harsul, Taluka and
District Aurangabad.
2. Namdeorao Raysing Harne
Age : 41 years, occ : business
R/o Ghrushneshwar Colony,
Mayur Park, Aurangabad.
3. Sanjay Sarjerao Autade
Age : 52 years, occ : business
R/o Harsul, Taluka and
District Aurangabad.

Applicants

Versus

The State of Maharashtra.

Respondent

WITH**ANTICIPATORY BAIL APPLICATION NO.1159 OF 2021**

1. Kantarao Laxmanrao Bankar
Age : 52 years, occ : business
R/o Chamunda Steel, Gandhinagar,
Aurangabad.
2. Kanhailal Biharilal Jaiswal
Age : 60 years, occ : business
R/o Juna Mondha Business Place, APMC
Market Sale, Jadhavwadi, Aurangabad.
3. Shivling Bhimashankar Gulave
Age : 48 years, occ : business
R/o APMC Market Yard Sale,
Hall No.5, Jadhavwadi, Aurangabad.

Applicants

Versus

The State of Maharashtra.

Respondent

CORAM : **PRAKASH D. NAIK, J.**

DATE : 29-11-2021

ORDER :

1. The applicants are apprehending arrest in connection with Crime No. 300/2021 registered with Harsul Police Station, District Aurangabad for the offence punishable under Section 419, 420, 463, 464, 468, 471, 474, 120-B read with Section 34 of the Indian Penal Code. The First Information Report (for short "F.I.R.") was registered on 1st September 2021.

2. The case of the prosecution is that in 1991, the complainant, Kantarao Bankar, Kanhaiyalal Jaiswal had purchased the property viz; land at Survey No. 157/01, 1 Hectare 70 Aar situated at Harsul. The said land was owned by Raising Khemsing Harne. Registered Isar Pawati was executed on 23rd August 1991. The consideration for the said transaction was Rs. 96,000/-.

Rs.15,000/- were given at the time of execution of Isar Pawati and the balance amount was to be given at the time of registration of document. It was also agreed to purchase 34 Hectare 58 Aar land of survey No. 153 from Raising Harne by the complainant, Kantarao Bankar, Kanhaiyalal and Shivling Gulve. Isar Pawati was executed and registered on 02.08.1991. The amount of Rs.15,000/- was given to Raising Khemsing Harne. Consideration for the sale was Rs. 72,000/-. Mutation entry was executed in 7/12 extract and other documents. Raising Harne, Kantarao Bankar, Kanhaiyalal Jaiswal, Shivling Gulave, Namdeo Harne and Sanjay Autade filed appeal for deleting the name of complainant before Sub Divisional Officer in 2017. Alongwith appeal, they filed cancellation letter of Isar Pawati. Cancellation deed was allegedly executed before the Notary. False cancellation deed was prepared by the accused. Signature of the complainant was forged. False document was produced before the Sub Divisional Officer and the order was obtained.

3. The applicant in ABA No. 1190 of 2021 is Notary. Applicant in ABA No. 1153 of 2021 is Advocate. Applicants in ABA Nos.1159 and 1158 of 2021 are the parties involved in the transaction.

4. The applicants had preferred applications for anticipatory bail before the Court of Session. The applications were rejected.

5. Learned Advocate for the applicant in ABA No. 1190 of 2021 submitted that the applicant is Notary. He is not involved in

commission of offence of forgery. His custodial interrogation is not necessary. He is willing to co-operate with the investigation. He has no nexus with the crime while checking genuineness of the documents. He has not played any role in executing documents. The documents were produced for execution before him. He had verified the identity proof and executed document by obtaining their signatures on notary register. The documents were executed in 2017 and the F.I.R. was lodged in 2021. The applicant has no criminal antecedents.

6. Learned Advocate for the applicant in ABA No.1153 of 2021 submitted that the applicant is Advocate. He is not involved in forgery of documents. The applicant has only signed as "identified". His custodial interrogation is not necessary. He is not concerned with the use of forged documents. He has been falsely implicated in this case. There is delay in lodging the F.I.R.

7. Learned Advocate for the applicants in ABA No.1159 of 2021 submitted that the documents were executed in 2017. The dispute is of civil nature. The transactions of Isar Pawati were executed 30 years ago. The complainant has not challenged the order of Sub Divisional Officer regarding cancellation of mutation entry. The police had not taken cognizance of the complaint lodged by complainant. He filed private complaint seeking investigation under Section 156 (3) of the Code of Criminal Procedure (for short "Cr.P.C."). Learned Magistrate has refused to direct the investigation. The complainant filed revision application in which

directions were issued under Section 156 (3) of Cr.P.C. and thereafter F.I.R. has been registered. The complaint is false. Investigation relates to documents which are already in possession of informant and Investigating Officer. The applicants are aged persons. The complaint is based on suspicion. Nothing is to be recovered from the custody of the applicants. They do not have criminal antecedents.

8. Learned Advocate for the applicant in ABA No.1158 of 2021 made similar submissions. He submitted that the dispute is of civil nature. On account of limitation the complainant has not resorted to civil remedy and initiated criminal prosecution to pressurise the applicants to settle the dispute. The transactions were executed 30 years ago. The order of Sub Divisional Officer whereby the mutation entry has been cancelled, has not been challenged by the informant. Custodial interrogation of the applicant is not necessary.

9. Learned A.P.P. submitted that all the accused have acted in connivance with each other. The accused in collusion prepared two separate documents for cancellation of agreement to sale and consent letter in the name of informant and the said documents were used for making change in revenue record. Custodial interrogation of the applicants is necessary. The offence is of serious nature. Informant has made specific allegations against the applicants. Detail investigation would be required. The accused were involved in forgery of documents. Custodial interrogation in

that regard is necessary. All the accused have acted in connivance. There was conspiracy to cheat the complainant. He has been depriving of his right in the property.

10. Learned Counsel for the complainant supported the submission of learned A.P.P. He submitted that all the applicants have played role in fabrication of documents. The said documents were produced before Sub Divisional Officer. The overt act has been attributed to all the applicants. They are party to the fabricated documents. Their custodial interrogation is necessary. The informant is one of the purchaser of property. By keeping him in dark, the accused had fabricated documents and produced them before the Authority. The Revenue Authority mutated name of informant. The sale deed was not executed on account of financial difficulties. Behind back of the complainant, the accused cancelled agreements by forging his signature. After learning about the same, the informant had lodged complaint. The police did not take cognizance of complaint and hence he had filed private complaint seeking investigation under Section 156 (3) of Cr.P.C. The learned Magistrate refused to grant relief under Section 156 (3) of Cr.P.C. The informant filed revision application before the Sessions Court. By order dated 3rd August 2021, the directions were issued under Section 156 (3) of Cr.P.C. and in pursuant to that, the F.I.R. was registered. The informant had not signed fabricated documents. To find out the truth in respect of the manner, preparation, intention, motive, the custodial interrogation of the applicants is necessary.

11. Having heard both the sides, I have perused the documents on record as well as investigation papers. The averments in the F.I.R. denote that the property at Survey No.157/01 was purchased in 1991 by complainant, Kantarao and Kanhaiyalal from Raising Harne. It was agreed that consideration for the said transaction was Rs. 96,000/-. Isar Pawati was registered on 23.08.1991. The amount of Rs. 15,000/- was paid to the vendor and balance consideration was to be paid at the time of registration of sale deed. The sale deed was not registered. Apparently balance consideration was not paid. The second transaction was in respect to land survey No. 153 admeasuring 34 Hectare wherein the property was purchased from Raising Harne by complainant, Kantarao, Kanhaiyalal and Shivling for Rs. 72,000/-. Isar Pawati was executed on 02.08.1991. The payment of Rs. 15,000/- was made. Balance payment was to be made at the time of registration. It is undisputed that the sale deed was not executed. The grievance of the complainant is that, the accused had initiated proceedings before Sub Divisional Officer in 2017 for deleting the name of complainant. They submitted the documents as stated above before the said Authority. The said documents were allegedly fabricated. It is pertinent to note that the order of Sub Divisional Officer deleting the mutation entry, has not been challenged by the complainant. It was open to the complainant to initiate civil proceedings in that regard. The said proceedings were initiated in 2017. The transaction of sale and issuance of Isar Pawati had occurred in

1991. Thus, for a period of 30 years the sale deed was not registered and balance consideration was also paid.

12. The applicant in ABA No. 1190 of 2021 is Notary by profession and the applicant in ABA No. 1153 of 2021 is Advocate. They are not beneficiaries of the transaction. They have not executed the documents. They are not party to the transaction of sale or cancellation of Isar Pawati. The entire matter relates to documents. In the light of factual aspects of the matter, custodial interrogation of the applicants is not necessary. Hence, I pass the following order.

ORDER

- (i) ABA No. 1190 of 2021, ABA No. 1153 of 2021, ABA No.1158 of 2021 and ABA No. 1159 of 2021 are allowed.
- (ii) In the event of arrest of the applicants in connection with Crime No. 300/2021 registered with Harsool Police Station, District Aurangabad, the applicants be released on bail on executing P.R. bond in the sum of Rs. 25,000/- each, with one or more sureties in the like amount.
- (iii) The applicants shall appear before the Investigating Officer on 06.12.2021, 07.12.2021 and 08.12.2021 between 11.00 a.m. and 1.00 p.m. and thereafter as and when called for, till filing of the charge-sheet.
- (iv) ABA No. 1190 of 2021, ABA No. 1153 of 2021, ABA No.1158 of 2021 and ABA No. 1159 of 2021 stand disposed of.

(PRAKASH D. NAIK, J.)