

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

ANTICIPATORY BAIL APPLICATION NO. 1316 OF 2021

Dinesh Ramchandra @ Rameshchandra Tiwari ...Applicant

VERSUS

The State of Maharashtra ...Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1288 OF 2021**

1. Prakash Shyamlal Katariya

2. Atul Ashok Khare ...Applicants

VERSUS

The State of Maharashtra ...Respondent

Mr. S.P. Brahme, Advocate for Applicants
Mr. A.V. Deshmukh, APP for Respondent
Mr. J.V. Patil, Advocate for assist to APP

CORAM : PRAKASH D. NAIK, J.

DATE : 06.12.2021.

Per Court :

1. This is an application under Section 438 of the Code of Criminal Procedure, seeking pre-arrest bail in Crime No. 418/2021 registered with Jilla Peth Police Station, District Jalgaon, for the offences punishable under Sections 420, 465, 467, 468, 471, 120 (B) read with 34 of the Indian Penal Code.

2. The brief facts of the prosecution case are as under :

The complainant's husband Harish Ramchandra Zawar is owner of Flat No. 101, situated at Mauje Pimprala Gut No. 33, admeasuring 72.46 sq.m. The said premises is occupied by accused Dinesh Ramchandra @ Rameshchandra Tiwari. On 24.07.2021, Dinesh Ramchandra @ Rameshchandra Tiwari had lodged FIR against the complainant and her husband with Jilla Peth Police Station, for the offences punishable under Section 420 read with 34 of the Indian Penal Code. The complainant and her husband had applied for anticipatory bail which was allowed and they were granted relief by the concerned Court on furnishing bail bonds. The complainant and her husband perused the complaint filed against them and it was noticed that the complainant in the said FIR had relied upon possession / sauda pawati, which was notarized document. Dinesh Ramchandra @ Rameshchandra Tiwari and his wife Lilabai Tiwari intended to purchase the said flat and they had approached the complainant's husband. Advertisement was published in newspaper Dainik Lokmat on 10.07.2019 and 13.07.2019. The advertisement was only in respect to the sale. In 2017, loan was obtained from State Bank of Hyderabad in the sum of Rs. 30,47,685/- for mortgaging the said property. The complainant had not executed any writing in respect to the transaction of sale with Dinesh Ramchandra @ Rameshchandra Tiwari and his wife. No document was executed

nor it was notarized with any notary or advocate. The complainant and her husband had also not handed over the photograph to any person. The complainant and her husband had not pasted their photographs on any written sauda pawati nor they have signed such document before witnesses Prakash Katariya and Atul Khare. The complainant and her husband had not handed over the photo copies of pan card to the accused. Dinesh Tiwari had prepared false possession / sauda pawati. The complainant and her husband had not signed the said documents. The price of the flat is mentioned as Rs. 41,51,000/-, had not been fixed by the complainant and her husband which have been shown in sauda pawati. It was also mentioned that it was agreed to pay amount of Rs. 4,32,000/- which is false statement. No writing was executed in respect to the deal, there was oral understanding between the parties. Some amount was paid by the accused by way of token which was transferred by Google Pay and cheque. The accused had promised that he would purchase the flat and induce the complainant to part the possession. However, the accused prepared the false document which have not been signed by the complainant and her husband nor they have signed the register. The signatures appear on the said documents are false. The photographs posted on sauda pawati were not handed over to the accused by the complainant. The said photographs were click during Rakshabandhan ceremony and posted on Face Book. The

photographs were separated by the accused and by acting in connivance with each other pasted on sauda pawati. The photo copies of Pan Card relied by the accused cannot be read. Shamlal Vishwasing Patil and Biraj Jain had conspired in preparing the false document to show that the transaction is genuine. The accused had prepared false affidavit and the same were handed over to Jilla Peth Police Station, Jalgaon. Thus all the accused had acted in connivance and prepared false document to cheat complainant and her husband. The FIR was registered on 20.09.2021.

3. Applicant Dinesh Ramchandra @ Rameshchandra Tiwari preferred application for anticipatory bail which has been rejected by the Court of learned Additional Sessions Judge, Jalgaon by order dated 20.10.2021.

4. The applicants Prakash Shyamlal Katariya and Atul Ashok Khare had preferred an application for anticipatory bail before the Court of Sessions at Jalgaon. The said applications were rejected by order dated 01.10.2021. While rejecting the application preferred by applicants, it was observed that investigation regarding forgery of document is necessary. Upon considering the statement of notary, it is revealed that the signatures of informant and her husband were not obtained in his presence on documents. The executants have not

shown their identity cards to him.

5. Learned Advocate for the applicants has urged that the allegations in the FIR are false. FIR was lodged by Dinesh Tiwari against the complainant and her husband for the offences punishable under Sections 420 read with 34 of the Indian Penal Code on 24.07.2021, vide Crime No. 339/2021. The accused therein had applied for anticipatory bail and the said application was allowed. The present FIR has been registered as counter blast to the FIR registered against opponents. Custodial interrogation of the applicants is not necessary. The applicant Dinesh Tiwari had parted the amount towards the transaction. The complainant and her husband intends to avoid their liability and execution of sale deed. The complainant and her husband are parties to the documents by which they had agreed to sale the flat to the applicant Dinesh Tiwari and had also handed over the possession of the premises. In spite of accepting huge consideration, the complainant was not performing her contract. The complainant and her husband had suppressed the fact that they secured loan by pledging the flat to the Bank. The encumbrances of Rs. 35.47 lakhs created in the year 2017 and in addition to that Rs. 10,00,000/- were created in the year 2018. The complainant and his wife did not respond for clearing encumbrances. The complainant and her husband were in need of money and they

had executed the transaction of Rs. 11,000/- were paid by the applicant Dinesh Tiwari and his wife towards earnest money. Rs. 7.40 Lakhs were paid by the applicant Dinesh Tiwari to complainant and her husband. The total consideration was fixed was Rs. 41.51 Lakhs. The payment of Rs. 41.19 Lakhs were made in cash as well as by cheque to the complainant and her husband in spite of that they were refused to execute the sale deed. On 08.09.2020, the complainant had issued a notice stating that the consideration amount was of Rs. 51.71 lakhs. The notice was replied by applicant Dinesh Tiwari stating that the consideration was Rs. 41.51 lakhs and out of that Rs. 41.19 lakhs were paid. The vendors were called upon to execute the sale deed. There were attempts of statement. The parties decided to enter into agreement of sale on 05.01.2021, agreement was executed between both the parties and the same was notarized. The parties affixed photographs, Pan Card and Aadhar Card for identification and signed the said agreement on 05.06.2021. It was agreed between the parties with the original consideration was enhanced by Rs. 4,00,000/- The purchaser was paid Rs. 4,20,000/- as the balance of Rs. 4,00,000/- for consideration. Sale deed was to be executed after clearing the encumbrances by the vendors. The complainant and her husband did not remove the encumbrances nor execute the sale deed. The complainant and her husband then moved the State Bank and induce them to issue attachment notice on

June, 2021. Their intention was to dodge the transaction and deceive purchasers. They have received Rs. 41.19 lakhs. The purchasers were put in possession of the flat in the year 2019. On 24.07.2021, applicant Dinesh Tiwari approached the police and lodged Crime No. 339/2021 with Jilla Peth police station against the complainant and her husband. The dispute is of Civil Nature. Huge amount of Rs. 41.19 lakhs transferred to complainant. Sale deed is not executed. The FIR is lodged as countered to the FIR lodged by Dinesh Tiwari. Custodial interrogation of the applicants is not necessary. Applicants Prakash Katariya and Atul Khare had merely acted as witnesses to the documents. They are not concerned with the subject transaction. They are not beneficiaries of the transaction. The amount paid from time to time were received by the complainant's husband through What's App chat between portion of chatted. The applicants do not have any criminal antecedents. The entire case leads to documents. The applicants need not be subjected to custodial interrogation.

6. Learned APP submitted that the offence is of serious nature. All the accused have acted in connivance with each other. The claim of the applicants is false. The flat is owned by the complainant and her husband. The applicant Dinesh Tiwari in connivance with the applicants Prakash Katariya and Atul Khare had fabricated the document and got it notarized. The photographs of the complainant

and her husband were pasted on possession / sauda pawati. The investigation revealed that the said photographs were obtained by the accused from Face Book. Custodial interrogation of the applicants is necessary. Statements of the witnesses were recorded during investigation. The statement of notary supports the prosecution's case. The vendors were not present while executing the said documents and their signatures were fabricated. Identification was manipulated. Applicants Prakash Katariya and Atul Khare had acted in connivance with Dinesh Ramchandra @ Rameshchandra Tiwari. They were aware that the documents are fabricated and identified the parties in the document. Applicant Prakash Katariya had filed the affidavit in support of the applicant Dinesh Tiwari before the Court of Sessions. In these circumstances, the application may be rejected.

7. The complainant had intervened by preferring applications seeking permission to assist APP. The complainant has annexed the documents showing that the photographs posted on Face Book which were manipulated by the accused and purportedly pasted on the subject document. Learned counsel for the complainant had submitted that the complainant and her husband are owners of the subject property. The same was purchased by them due financial constrains. They intended to sell the property and issued advertisement in the Daily News Paper. The accused had approached the husband of first informant and shown interest in purchasing

property. The informant and her husband have not executed any agreement or legal document in respect to flat. The accused have forged the document. The signature of the complainant and her husband were forged. The attesting witnesses have acted in connivance with the other accused. The complainant had never seen the said witnesses. The document is fabricated. The complainant and her husband were falsely implicated in the FIR. They had preferred application for anticipatory bail which was allowed. On verification of the documents relied by the accused, it was found that they had deployed dummy people and by way of fake signature whole documents were created. The attesting witnesses have criminal background. The complainant and her husband do not know them. The complainant had filed an affidavit before the Sessions Court opposing the application for anticipatory bail preferred by the accused. In the said affidavit, it was pointed out that the applicant Dinesh Tiwari has having several criminal antecedents. He is a habitual offender. The complainant and her husband had purchased the property. Loan was obtained from the Bank and there was encumbrances on the property. The encumbrances were shown in the property extract which is a public document. It is difficult to believe that the accused was not aware about the encumbrances. The document is created by the accused. The case requires investigation. The photographs which were pasted on the document

is annexed to the application preferred by the complainant. The accused have annexed the photo copy of the fabricated document. On perusal of the coloured xerox of the fabricated document it is alleged that the photograph were pasted by notarizing, were replaced by the photographs of the complainant and her husband. The copy of the Pan Card is not legible. The extract card of the property clearly mentions the encumbrances of the complainant and her husband. The photo copy of the said document has been annexed to the said application.

8. I have perused the documents. The first informant and her husband are the owners of the flat premises. According to the complainant there was oral transaction with regards to sale of the flat premises, some amount was paid by cheque and online transfer. The complainant forwarded notice to accused Dinesh Tiwari and Smt. Lilabai Tiwari on 19.09.2020. In the said notice, it was stated that the subject flat is owned by the complainant and her husband. It was agreed to be sold to the accused for a consideration of Rs. 67,51,000/-. Token amount of Rs. 11,000/- was given by the accused. It was represented by the accused that the balance amount was to be paid by obtaining loan. Thereafter, notice was published about the sale of the property since there was no objection received from any party. The accused No. 1 induced the complainant to part with the possession of the premises with assurance that the balance

consideration would be paid to the owners within short time. The applicant Dinesh Tiwari and his wife are agreed that they would clear the loan borrowed by the owner of the premises by depositing money with the lender bank. The complainant acquired information about depositing the amount with the accused. The accused gave a cheque of Rs. 5,00,000/- drawn by State Bank of India, Jalgaon branch dated 30.11.2019. The accused also transferred an amount of Rs. 20,000/- and Rs. 18,000/- by Google Pay to the husband of complainant and assured that the balance consideration would be cleared shortly. However, thereafter no amount was paid by the accused. The notice was replied by Dinesh Tiwari and his wife through advocate's reply dated 19.09.2020. The contention of the accused was that the complainant had not disclosed that there are encumbrances on the premises. It was represented the title is clear. The consideration for sale of flat was agreed to be Rs. 38,00,000/- and the price of furniture was Rs. 1,52,000/-. Advertisement was published in the news paper. The complainant had falsely claimed that the consideration for sale of flat is Rs. 1,65,000/-. The complainant had deceived the accused. The complainant demanded consideration in cash as they were in need of money. On 01.10.2019, accused No. 1 parted amount of Rs. 7,40,000/- in presence of witnesses. On 09.10.2019, Rs. 5,00,000/- were given to the complainant by withdrawing the same from Bank in the presence

of witnesses. On 10.10.2019, amount of Rs. 5,00,000/- was handed over to the complainant. On 11.10.2019, 14.10.2019, and 27.11.2019 the accused paid amount of Rs. 5 lakhs, 4 lakhs and 4,19,000/-. The total amount paid to the complainant was Rs. 30,41,000/-. The accused were always willing to execute the sale deed. Receipts were not issued about the payment. In June, 2020, the accused suspected the conduct of the complainant's husband and insisted for execution of transaction in writing at that time the complainant informed that there is loan of Rs. 40,00,000/- on the said property. The complainant did not disclose that the property mortgaged with the bank. What's App chat exchanged between the party indicates that the amount of Rs. 22,51,000/- was received by the complainant. The contention of the accused applicant Dinesh Tiwari is that the possession / sauda pawati agreement was executed on 05.01.2021, wherein it was mentioned that the complainant had received Rs. 14,21,000/- towards sale of the property. The document was signed by the complainant and her husband. It was notarized. The accused Prakash Katariya and Atul Ashok Khare was the witnesses to the said document. On the basis of the said document, FIR was registered against complainant and her husband for an offence under Section 420 of IPC with Jilla Peth police station vide Crime No. 339/2021 for offence under Section 420 read with 34 of IPC. In the FIR, it was alleged that amount of Rs. 41,19,000/- were

paid to the complainant towards purchase of the premises by cash and cheque. The complainant and her husband applied for anticipatory bail which was granted and thereafter, the present FIR has been registered.

9. The accused No. 1 has relied upon the documents such as notice dated 08.09.2020, reply dated 19.09.2020, Agreement dated 05.01.2021, possession notice issued by State Bank of India dated 19.06.2021 and WhatsApp chat.

10. It is apparent that the contention of the applicant Dinesh Tiwari is that there was a transaction between him and complainant and her husband with regards to sale of the the flat premises. Possession was handed over to him, substantial payment was made by him. There is variation in the consideration claimed by the complainant and it was agreed by both sides. The payment was made to the complainant in the presence of witnesses. The parties have signed the agreement by pasting their photographs. FIR was registered against the complainant and her husband. By way of counterblast, the FIR has been registered against the applicant.

11. Contention of the applicants Prakash Katariya and Atul Khare. is that they merely acted as witnesses, they are not beneficiaries of the transaction. Their custodial interrogation is not necessary.

12. It is pertinent to note that there is no cogent evidence to establish the fact that substantial payment was made by the applicant Dinesh Tiwari to the complainant as claimed by him. According to him, the transaction was in cash and receipts were not issued by the complainant and her husband. However, there are witnesses in whose presence the payment was made. Those witnesses are quoted by the applicant himself. Wife of applicant Dinesh Tiwari has been granted relief under section 438 Cr.P.C. Contention of the applicant Dinesh Tiwari is that the dispute is of civil nature, however, in respect of same transaction he had lodged FIR in which the complainant and her husband could have been arrested. They were granted relief under section 438 Cr.P.C. On minute observation of the agreement relied by accused, it appears that photographs of the complainant and her husband were pasted on the stamp of notary. The applicants had relied upon the photographs on the said documents in which picture is not clear. However, the complainant has produced the colour xerox copy which makes it evident that the photographs were pasted. The prosecution case is that signatures of the complainant and her husband are forged. Prima facie there is reason to suspect the document.

13. The applicants Prakash Katariya and Atul Khare had acted

as witnesses. It is relevant to note that applicant Prakash Katariya had filed affidavit before the Sessions Court supporting the contention of applicant Dinesh Tiwari. On perusal of the contents of the application for anticipatory bail preferred by both the applicants Prakash Katariya and Atul Khare it can be seen that they are completely supporting the case of the complainant, even to the extent of transaction which they had executed with the complainant and her husband. Screen short of photograph of complainant and her husband appearing on the Facebook has been annexed to the application. It is very clear that those photograph was separated and pasted on the agreement. On the face of record, the said document is fabricated. The applicants Prakash Katariya and Atul Khare are apparently acting hand in gloves with accused No.1 Dinesh Tiwari. The complainant had filed and affidavit before the Court of Sessions opposing the anticipatory bail. In the said affidavit, it was stated that the applicants are having criminal antecedents. Civil cases were registered against Dinesh Tiwari. The details are provided in the affidavit. He is shown to be involved in about 12 cases registered under the provisions of the Essential Commodities Act. Applicant Prakash Katariya is involved in Crime No. 352/2015 for he offence under section 406 IPC. Applicant Atul Khare is accused in SCC No.1445/2012 registered under sections 66 and 192 of Motor Vehicles Act and RCC No.278 registered under sections

420, 465, 467, 471 IPC. The complainant has also stated that applicant Dinesh Tiwari was detained under the Preventive Detention Act and the order annexed to the application preferred by the complainant refers to the registration of civil cases.

14. I have also perused the investigation papers. There is sufficient evidence showing complicity of the applicants in the crime. Statements of witnesses were recorded. On perusal of possession/ Saudapavti, it can be seen that it is in the form of plea of guilty by the complainant admitting acceptance of amount by way of consideration, suppression of vital fact. The contents by itself speaks volume about doubt of its genuineness. Statement of witness Washim Patel was recorded on 19.10.2021. He has stated that on perusal of the agreement dated 05.01.2021, it can be seen that stamps of notary appearing therein were below the photographs of the complainant and his wife which are apparently pasted on the said document. Statement of the Advocate was recorded. He stated that he is working as notary. On 05.01.2021, he was contacted by one of the Advocate who had informed him that one document is to be notarized. He informed him that photo identity is required for notarizing the document. He was in the office at about 4.30 p.m. Due to pandemic of Covid, he was not allowing entry to the clients directly in the office. About 4 to 5 persons visited

the office. One of them was lady. They were wearing mask. They forwarded the documents to be notarized. On demanding identification proof, they provided photocopy of their identity. The woman who was present for notarizing the document stated that she has brought photocopy of Pan Card and she has not brought the Adhar Card. He took the said documents from the parties and made requisite entry in the register. They signed the document and he put up his stamp on the document. His supplementary statement was recorded subsequently. In the said statement, he stated that the woman present for signing the document was wearing scarf, her husband was also wearing mask. He knows Dinesh Tiwari, he was wearing mask. On believing the advocate who had forwarded them, the notary signed the document in good faith. On perusal of the said document he stated that the stamps appearing on the photographs of Pooja Zavar and Harish Zavar were not stamped by him. Some one had replaced the photographs by pasting different photographs.

15. Prakash Shamlal Katariya had filed affidavit dated 28.07.2021 stating that Dinesh Tiwari had purchased the flat from the complainant and her husband for consideration of Rs.41,51,000/-. He has made payment of consideration by withdrawing the amount from bank from time to time. Since there was delay in executing the sale

deed and there was dispute between the both the parties, he had persuaded applicant Dinesh Tiwari to increase the consideration by Rs. 4 lakhs and hence the document was executed on 05.01.2021 on a stamp paper which was notarized. Harish Zawar and Pooja Zawar had notarized the document in his presence and he had signed the document as witness. Thus the role played by applicants Prakash Tiwari and Atul Khare is not simplicitor acting as witnesses. From the record and from their contentions, it is apparent that they are acting in connivance with Dinesh Tiwari.

15. In the circumstances, no case for grant of anticipatory bail is made out and applications deserves to be rejected. Hence, I pass the following order:

O R D E R

Application for Anticipatory Bail Nos. 1316/2021 and 1288/2021 are rejected.

(PRAKASH D. NAIK, J.)

JPC