

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**ANTICIPATORY BAIL APPLICATION NO. 1349 OF 2021
WITH APPLICATION NO. 2781 OF 2021 IN ABA 1349 OF 2021**

1] Satish s/o. Kishanrao Babhale
2] Sanjeevaji w/o. Pandurang Patil
3] Bhimrao s/o. Radhakisan Udhar
4] Imtiyaz s/o. Iqbal Shaikh .. Applicants.

Versus

The State of Maharashtra .. Respondents.

Mr. Aniruddha B. Ghule, Advocate for applicants
Mr. S.B. Narwade, APP for respondent-State,
Mr. M.R. Sonwane, Advocate for complainant to assist APP

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CORAM : PRAKASH D. NAIK J.

DATE : 6th DECEMBER, 2021.

PER COURT:

1] The applicants are apprehending arrest in Crime No. 527 of 2021 registered with Kadim Jalna Police Station (Rural) on 24.10.2021 at the instance of Vinaykumar Rikabchand Kothari for offences under sections 420, 465, 466, 468, 471 of IPC.

2] The FIR was registered against Satish Kisanrao Babhale, Sanjiwani Pandurang Patil, Vitthal Namdeo Agale, Damodar Kondiba Vaidya, Kachru Ganpatrao Navpute, Vishnu Malwade, Bhimrao Udhar, Vishnupant Bodkhe, Vijay Sisodiya and Imtiyaz Iqbal Shaikh.

3] The case of the prosecution is that in 1994, the complainant and 128 other persons from Jalna city had purchased

the property at Mouje Indewadi, Taluka Jalna. The area of property purchased was admeasuring 2 Hectares 58 R from Gat No. 77 for Rs. 2,93,000/- by registered deed dated 18.5.1994. The property was purchased for the purpose of constructing houses. The complainant is owner of Plot No.1(K). On 3.2.2021, Plot Nos. 1 and 2 were sold by executing sale deed registered with Sub-registrar to accused Nos. 1 and 2. The documents relating to NA permission were fabricated.

2] The applicants preferred an application for anticipatory bail before the Court of Sessions. The said application was rejected on 28.10.2021.

3] The learned counsel for the applicants submitted that the dispute is of civil nature. The investigation relates to documents. The complaint is imaginary. The FIR was lodged after a period of about 9 months from the date of transaction. Civil Suit is pending between the informant and the applicants which is numbered as Special Civil Suit No. 91 of 2021 for cancellation of sale deed. The sale deed dated 3.2.2021 between applicants and others was lawful. There is no fabrication of documents of Gat No. 77. NA Layout was sanctioned on 16.7.2008. Informant filed application before the Tahsildar Jalna on 27.4.2021. The complaint was filed on 8.7.2021 and the FIR was registered on 24.10.2021.

4] The learned APP submitted that the applicants are involved in fabrication of documents. Thorough investigation is necessary. The applicants are named in the FIR. They are involved in fabricating documents in respect of property owned by informant and others. There is tampering of public record Hence, relief under section 438 of Cr.P.C. may not be granted to the applicants.

5] The learned counsel for the complainant supported the submissions of learned APP. The complainant is businessman. Several persons including complainant had purchased the subject property vide registered sale deed dt. 18.5.1994. As per the sanctioned layout of land, the complainant and 5 others are owner and possessor of plot Nos. 1 and 2 of Gat No. 77 situated at Indewadi. The accused had prepared bogus documents and executed false sale deed in respect of Plot No. 1 and 2 owned by complainant and 5 others. The accused have no concern with Plot No. 1 and 2. By preparing false documents, the property is transferred to the accused. The applicants are specifically named in the FIR. Role has been attributed to them. The complainant and others have filed civil suit against the accused for declaration and cancellation of sale deed. Vitthal Agale, Damodar Vaidya, Kachru Navpute and Vishnu Malwade had appeared in the civil proceeding and stated that accused Nos. 4 and 5 have cheated them. Written statement was filed by the said defendants. Custodial interrogation of the applicant is necessary.

6] The FIR is registered on 24.10.2021. The sale deed relating to part of Plot No.1 in Gat No.77 was executed between Vitthal Namdeo Agale, Damodar Vaidya, Kachru Navpute through power of attorney holder Bhimk Rao Udhar and Satish Babhale and Sanjiwani Pandurang Patil. Vishnu Bodkhe, Vijay Sisodiya and Imtiyaz Shaikh were consenting party. The sale deed was executed on 3.2.2021. The description of the property was plot No.6 towards East, 12 meter service road towards west, part of plot No.1 towards south and part of Plot No.3 towards north. The sale deed further mentions that the property is being sold for consideration of Rs. 12 Lakhs. It contains photographs and signatures of Vitthal Agale, Damodar Vaidya, Kachru Navpute and Vishnu Malwade who were sellers of property as well as photograph and signatures of

consenting party i.e. Vishnu Bodkhe, Vijay Sisodiya and Imtiyaz Shaikh.

7] Bhimrao Udhar was power of attorney holder of Damodar Vaidya, Kachru Navpute and Vishnu Malwade. The power of attorney has been annexed to the application. The contents indicate that Damodar Vaidya, Kachru Navpute and Vishnu Malwade had given power of attorney to Bhimrao Radhakisan Udhar. The power of attorney was registered in the office of sub-Registrar. It contains photographs and signatures of the parties. It also refers to description of property. The applicants have placed on record the power of attorney dated 10.12.2020 executed by Vishnu Bodkhe, Vijay Sisodiya in favour of Imtiyaz Iqbal Shaikh for registration of document. The complainant has filed a suit which is pending. It appears that some of the accused namely, Vitthal Agale, Damodar Vaidya, Kachru Navpute, Vishnu Malwade had filed written statement by appearing before the Civil Court in the suit proceeding initiated by the complainant. The complainant had contended that the said accused had submitted that the applicants have cheated them. There was no proper description of the property in the power of attorney.

8] Thus, the entire matter relates to interpretation of documents such as power of attorney and description of property. The suit initiated by the complainant is pending. Some of the accused have supported the complainant in the civil suit, although it was alleged in the FIR that they were acting in connivance with the applicants.

9] Considering the factual aspects of the matter, the applicants need not be subjected to custodial interrogation. Matter relates to documents. Hence, I pass the following order :-

O R D E R

i] ABA No. 1349 of 2021 is allowed.

ii] In the event of arrest of the applicants in Crime No. 527 of 2021, registered with Kadim Jalna Police station, District Jalna , the applicants be released on executing PR Bond in the sum of Rs. 25,000/- each, with one or more sureties in the like amount.

iii] The applicants shall report the I.O. on 13th, 14th and 15th December, 2021 between 11.00 a.m. to 1.00 p.m. and thereafter as and when called till filing of charge sheet.

iv] Criminal Application No. 2781 of 2021 stands disposed of.

**[PRAKASH D. NAIK]
JUDGE**

grt/-