vinita

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION BAIL NO. 34 OF 2021(F).

FRANCY AGNELO GONSALVES ... Applicant.

Versus

STATE, THR. THE POLICE INSPECTOR, CRIME BRANCH, RIBANDAR AND ANR ...Respondents.

Mr. Z. D'Souza, Advocate *for the Applicant.*
Mr. S. G. Bhobe, Public Prosecutor *for the respondents.*

CORAM: MANISH PITALE, J.
DATED: 22nd September, 2021.

P.C.:

1. Heard Mr. Z. D'Souza, learned Counsel appearing for the applicant, and Mr. S. G. Bhobe, learned Public Prosecutor appearing for the respondents/State.

2. The applicant in the present application is seeking anticipatory bail in connection with FIR registered on 22.1.2018 against the applicant and the five co-accused persons for the offence under Sections 193, 209, 205, 404, 406, 419, 420, 465, 466, 468,471 read with Sections 34, 120-B of IPC.

3. In a nutshell, the allegation against the applicant is that he caused a power of attorney to be executed before a Notary on 29.11.2007 in his favour from one Laxmibai Madval. The allegation is that some other person was shown as Laxmibai Madval and irrevocable power of attorney in favour of the applicant was got executed from the said person posing as

Laxmibai Madval, in connection with the sale of a property admeasuring 74,800 sq. mts. in Pernem Goa. On the strength of the said power of attorney, on 29.7.2010, a sale deed was executed in respect of the said property by the applicant as the power of attorney holder of the said Laxmibai Madval, in favour of the co-accused Kenneth Silveira. The said land was the subject matter of acquisition and the compensation payable was determined by an award dated 13.6.2011. The said co-accused purchaser of the property claimed that he was allegedly unaware of the said acquisition proceedings and that he had a ready buyer for the property for a sum of about ₹ 15 crores. The said co-accused purchaser, on 13.8.2012, addressed a letter to the Special Land Acquisition Officer and he claimed market value of about ₹15 crores for the acquisition of the said land or in the alternative requested for rolling back the said acquisition.

4. The FIR in the present case has been registered based on a report lodged by the Director of Civil Aviation, i.e. the office for which the land in question was acquired. The initiation of proceedings appears to be based on large-scale fraud, involving forgery and fabrication on the part of accused persons in order to defraud the government exchequer. The role of the applicant was allegedly that of facilitator in such a large scale fraud on the government exchequer, by causing impersonation of the said Laxmi Madival and playing a crucial role in the creation of such Power of attorney and then executing the sale deed in favour of co-accused who would then stand to gain by claiming compensation for the acquisition of the land. The legal heirs of the said Laxmi Madval also appeared to have raised a claim in respect of the land and towards compensation payable for its acquisition.

5. The appellant had approached the Sessions Court North Goa Panaji with an application for grant of anticipatory bail. The said application was dismissed by an order dated 24.2.2021, passed by the Court of Additional Sessions Judge, Panaji.

6. Mr. D'Souza, learned counsel appearing for the applicant invited the attention of this Court to the documents on record and submitted that by the very nature of the allegations made against the applicant, the material evidence was documentary in nature, which was already in the custody of Investigating Officer, and that therefore, no case was made out for custodial interrogation. It was submitted that if the allegations against the applicant were that he had caused impersonation of the said Laxmi Madval and he illegally got the power of attorney dated 29.11.2007 executed in his favour, it could not be insisted upon by the investigating officer that the onus was on the applicant to produce the said Laxmi Madval or to produce material indicating that she was dead. It was emphasized that the investigating officer knew the whereabouts of the Legal heirs of Laxmi Madval and such inquiry could very well be made with the legal heirs also. It was submitted that the applicant was in touch with Laxmi Madval at the point in time when the power of attorney was executed and thereafter the applicant was unaware of her whereabouts. It was submitted that if the applicant had any criminal intention, he would have immediately caused the sale deed to be executed on the strength of Power of attorney, but the sale deed in question was actually executed after about three years, on 29.7.2010, thereby indicating that there was absolutely no criminal intention on the part of the applicant.

7. It was further submitted that the person who eventually would be gaining financial benefit in the present case would be the purchaser co-accused and there was nothing to indicate that the applicant had brought about the entire sequence of events in order to defraud the Government exchequer. It was submitted that the allegations made against the applicant were farfetched, apart from the fact that there was no reason for insisting upon the custody of the applicant.

8. On the other hand, Mr. S. G. Bhobe, learned Public Prosecutor appearing on behalf of the respondents/State invited attention of this Court to the notarized power of attorney dated 29.11.2007, sale deed dated 29.7.2010, letter dated 13.8.2012 addressed by the co-accused purchaser to the Special Land Acquisition Officer, an affidavit sworn by the said co-accused purchaser and submitted to the Income Tax Authorities and other such documents. On the basis of the contents of the said documents, it was submitted that the investigating officer was able to reach upto a certain stage in the investigation but to take it further, co-operation of the applicant was necessary and that for the said reason his custody was necessary. He submitted that the applicant had not co-operated with the investigating officer and that he was stonewalling the process. By inviting attention to the contents of the documents, it was contended that even after notarized power of attorney was executed on 29.11.2007, the applicant very much claimed to be in touch with the said Laxmibai Madval and that therefore, it was necessary to interrogate the applicant to unearth the complete conspiracy and the manner in which the offence was committed, as this was a serious case of large scale defrauding of the Government exchequer. It is submitted that there are instances of this nature in

Goa where prime properties belonging to the persons whose whereabouts are perhaps not available are siphoned away in this manner and large scale claims are illegally made on the government exchequer in cases involving acquisition and in other cases such properties are commercially exploited without any iota of right in the such properties. On this basis, it was submitted that the application deserved to be dismissed.

9. This Court has perused the material on record and appreciated the rival contentions in the light of the material brought on record. The applicant does not deny that Power of attorney was executed by Laxmi Madval in his favour before the notary 29.11.2007. It is on the strength of the said power of attorney that registered sale deed dated 29.7.20100 was executed in favour of the co-accused purchaser.

10. The material on record shows that payment of consideration in the aforesaid transaction was made by way of two cheques of Rs.50 lakhs each and part of the amount i.e. Rs.19,68,000/- was paid by cash. The Investigating Officer has been able to find out that the said alleged cheques that were issued towards consideration were never encashed. The co-accused purchaser claimed in the letter dated 13.8.2012 issued to the Special Land Acquisition Officer that he had a ready purchaser for the said property for about Rs.15 crores, thereby surprisingly indicating a quantum leap in the value of the land from the date of sale deed to the date when the said letter was sent by the co-accused purchaser.

11. Affidavit sworn by the purchaser and submitted before the Income Tax Authorities states that according to him after execution of the sale deed he came to know that the said property was under acquisition and he immediately informed the said Laxmi Madval not to deposit the cheques and also asked for a refund of the cash amount. It is stated in the said affidavit that there was a verbal understanding with Laxmibai Madval, and that she had agreed not to deposit the cheques. Interestingly, this affidavit is dated 18.3.2014, wherein it is claimed that the co-accused purchaser became aware about the Land Acquisition proceedings immediately after the execution of the sale deed, yet in the aforementioned letter dated 13.8.2012, the co-accused purchaser stated that he became aware about the acquisition of the land only on 11.8.2012 when he saw his name replaced by that of the Director of Transport in the occupant list.

12. Apart from this, documents on record also show that a judgment and award was passed by the District Court, Mapusa in Land Acquisition Case Reference under Section 30 of the Land Acquisition Act, 1894, where Laxmibai Madval is shown as the applicant no.1 through the applicant before this Court as the power of attorney holder and the applicant no. 7 is the co-accused purchaser. Ultimately it is found in the said judgment and award dated 30.10. 2015 that the co-accused purchaser is entitled to the amount of compensation. The said amount of compensation is to the tune of about Rs. 46 lakhs and presently co-accused purchaser is pursuing litigation claiming three times the said amount of compensation under a Government policy.

13. In the statement of the applicant himself recorded during the course of investigation, it is clearly stated that the applicant and the co-accused purchaser had tried to meet Laxmi Madval at a residence in Casarvarnem village Pernem. This is significant for the reason that in the power of attorney Laxmibai Madval is shown as a resident of a place in Andheri, Mumbai. The Investigating Officer, upon visiting the said place, found that it was a government property that was already demolished.

14. The aforesaid material on record prima facie indicates that the applicant did play a crucial role in the entire sequence of events leading to huge loss to the Government exchequer. The manner in which the entire transaction was undertaken, indicates that the execution of power of attorney dated 29.11.2007, before the notary allegedly on the basis of impersonation, was a key factor. The whereabouts of the said Laxmi Madval become significant in the context of the sequence of events. It is in this backdrop that the learned Public Prosecutor is justified in contending that although at first blush it may appear that the evidence in the present case is documentary in nature, but there is more than meets the eye and the role of the applicant is such that his custodial interrogation is necessary for further proper investigation into the matter. This will help unearth the modus operandi and the manner in which such activity had been undertaken, in order to defraud the government exchequer.

15. In this context, the learned Public Prosecutor is justified in relying upon the judgment of the Hon'ble Supreme Court in the case of ***State Rep. By the C.B.I. Vs. Anil Sharma***, ***(1997)7 SCC 187*** and judgment in the case of ***Mr. Abhay R. Sinha and others Vs. State of Maharashtra ad others(2000) 5 Bom CR 307***

16. In case of ***State Rep. By the C.B.I. Vs. Anil Sharma*** (supra), in the context of qualitative difference in interrogation, the Hon'ble Supreme Court has held thus:-

> *"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disintering offences would not conduct themselves as offenders."*

17. The said position of law is followed in judgment of this Court in ***Mr. Abhay R. Sinha and others Vs. State of Maharashtra*** *(supra)* and it has been held by this Court that even in economic offences custody of an accused person may be necessary, depending upon the facts and circumstances of the case. The position of law laid down in said case ***State Rep. By***

the C.B.I. Vs. Anil Sharma (supra) has been followed in a number of cases as it is the settled position of law.

18. This Court is of the opinion that in the facts and circumstances of the present case, the Sessions Court did not commit any error in rejecting the application for anticipatory bail.

19. The allegations against the applicant are serious in nature. The material on record does indicate that there has been lack of co-operation on the part of the applicant with the investigation and that in the facts and circumstances of the present case the applicant has failed to make out a case for grant of anticipatory bail. The investigating officer desires to interrogate the applicant and confront him on certain aspects of the investigation and the same cannot be interdicted by an order of grant of anticipatory bail.

20. In view of the above, the application is dismissed.

MANISH PITALE, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK Date: 2021.09.23 18:12:48 +05'30'