

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 794 OF 2019**

1 Gurumukh Nanomal Khupchandani,
Age : 64 years, Occupation : Businessman,
R/o – Pappu Society, Ulhasnagar-3,
Taluka – Ulhasnagar, District : Thane.

2 Ram haridas Dhanwani,
Age : 62 years, Occupation : Businessman,
R/o – 201, Sev Adas Apartment,
Municipal Corporation Office,
Ulhasnagar-03, Tq- Ulhasnagar,
District : Thane,

3 Manohar V. Dayaramani,
Age 55 : years, Occupation : Businessman,
R/o- Shankar Mahadev Company,
Kalyan-Amernath Road,
Ulhasnagar-3, Tq- Ulhasnagar,
District : Thane.

.....Applicants

Vs.

1 The State Of Maharashtra
(At the instance of Murbad Police
Station, Thane, Mumbai)

2 Smt. Pratibha Ramdas Nagvekar,
Age : 53 years, Occuparion : Agriculturist,
R/o. Brihamangaon, Post – Kishor,
Tq – Murbad District Thane.

3 Joseph P. Jorge,
Age 58 years, Occupation : Businessman,
R/o. D-2, Neeltaj Nagar, Karnik Road,
Kalyan (West), Tq- Kalyan,
District Thane.

.....Respondents

WITH**ANTICIPATORY BAIL APPLICATION NO. 811 OF 2019**

Joseph George Palatty,
Age 61 years, Occupation Service,
R/at : Alif Apartment, A/301,
Karnik Road,
Near Holi Cross High School,
Kalyan- (W), Dist. Thane.

.....Applicant

Vs.

State Of Maharashtra,
Murbad Police Station,
Tal. Murbad, Dist. Thane.

.....Respondent.

Mr. G.S. Godbole i/by Mr. D.S. Patil for the Applicants in ABA No.794 of 2019.

Mr. Vikram Sutaria for the Applicant in ABA No.811 of 2019.

Mr. Y.M. Nakhwa APP, for the Respondent-State.

Mr. V.M. Todkari, PSI Murbad Police Station, Thane (Rural) present.

CORAM : A. S. GADKARI, J.

DATE : 30th OCTOBER, 2021.

P.C.:-

These are the Applications under Section 438 of the Code of Criminal Procedure for pre-arrest bail in C.R. No. I-537 of 2018 dated 5th December, 2018 registered with Murbad Police Station, District Thane for the offence punishable under Sections 420, 465, 467, 468 and 471 read with Section 34 of the Indian Penal Code.

2 Heard Mr. Godbole, learned counsel for the Applicants in ABA No.794 of 2019, Mr. Sutaria learned Advocate for the Applicant in ABA No.811 of 2019, Mr. Nakhwa learned APP for the Respondent-State.

Perused record of investigation.

3 The first information report is lodged by Smt. Pratibha Ramdas Nagvekar in furtherance of the Order dated 26th September, 2018 passed under Section 156(3) of the Code of Criminal Procedure by the Judicial Magistrate, First Class, Murbad in OMA No.167 of 2018 against the Applicants.

 The prosecution case in nutshell is that, the mother of informant namely Smt. Babybai Laxman Rumade was owner of agricultural land bearing No.324 admeasuring 60 ares, lying and situate at village Brahmangaon, Taluka Murbad, District Thane. Though the said Babybai Rumade never executed a Power of Attorney in favour of Joseph P. Jorge @ Joseph George Palatty (Respondent No.3 in ABA No.794 of 2019 and Applicant in ABA No.811 of 2019), the Applicants, in connivance with each other by creating bogus and fabricated documents i.e. Power of Attorney dated 26th May, 1995 in favour of Joseph George and Sale Deed dated 30th November, 1996, sold the said property in favor of the Applicants in ABA No.794 of 2019. In this brief premise, the present crime is registered.

4 Mr. Godbole, learned counsel for the Applicants in ABA No. 794 of 2019 submitted that, the Applicants are bonafide purchasers of said land for valuable consideration. That, at the time of execution of the Sale Deed of the suit land, the Power of Attorney dated 26th May, 1995 which is in favour of co-accused Joseph George was verified and only thereafter the

said Sale Deed dated 30th November, 1996 was executed. He further submitted that, son of the first informant namely Sandip Nagvekar is witness No.2 to the execution of the said Sale Deed dated 30th November, 1996 duly registered with the Sub-Registrar of Assurances, Murbad. He further submitted that, the informant and the said Sandip Nagvekar thereafter instituted a Civil Suit and filed another private complaint against the Applicants, which did not yield positive result and therefore the present crime has been registered as and by way of an afterthought against the Applicants. He submitted that, annexing Power of Attorney to the said registered Sale Deed is not a mandate of law, though may be a matter of prudence and therefore the Applicants in ABA No.794 of 2019 cannot be blamed for not annexing the Power of Attorney to the Sale Deed. That, the present crime is registered after a lapse of substantial period and therefore, the custodial interrogation of the Applicants is not necessary. He further submitted that, ultimately it is the question of personal liberty of a citizen, which may be protected. He submitted that, for the last two years the Applicants have co-operated with the Investigating Agency and their statements have been recorded. He therefore prayed that, Application filed by the Applicants in ABA No.794 of 2019 be allowed.

5 Mr. Sutaria, learned Advocate for the Applicant Joseph George in ABA No.811 of 2019, in addition to the arguments advanced by Mr. Godbole submitted that, the Power of Attorney dated 26th May, 1995 was

executed in favour of his client by Smt. Babybai Laxman Rumade, which was handed over to the Applicants in ABA No.794 of 2019 at the time of execution of said Sale Deed dated 30th November, 1996. He on instructions from his client makes this solemn statement in open Court. He submitted that, as of today his client is unable to produce either the original Power of Attorney or its photocopy, as it was handed over to the Applicants in ABA No.794 of 2019 at the time of execution of the said Sale Deed.

He further submitted that, when the informant lodged her present Complaint before the Trial Court, she did not allege in it that, her son Mr. Sandip Nagvekar did not sign the said Sale Deed as witness No.2. It is also not alleged in the said Complaint that, the Sale Deed has been forged by the Applicants herein. He therefore prayed that, his client may be protected by pre-arrest bail by allowing his Application i.e. ABA No.811 of 2019.

6 It is to be noted here that, as of today it is an admitted fact on record that, the alleged Power of Attorney dated 26th May, 1995 purportedly executed by Smt. Babybai Rumade in favour of Applicant Mr. Joseph George (ABA No.811 of 2019) is not available on record and is also not traceable to the Investigating Officer. The Applicants in ABA No.794 of 2019 are allegedly claiming that, the said Power of Attorney is in existence and was in possession of the Applicant Mr. Joseph George on the date of execution of the document in question i.e. Sale Deed dated 30th November, 1996.

In contrast thereto, Mr. Joseph George (Applicant in ABA No.811 of 2019) today has categorically made a solemn statement before this Court that, the said document i.e. Power of Attorney was handed over to the Applicants in ABA No.794 of 2019 on the date of execution of the said Sale Deed. The said Power of Attorney does not form part of the said Sale Deed dated 30th November, 1996 under which the aforesaid property admeasuring 60 ares belonging to Smt. Babybai Rumade, was transferred in favour of the Applicants in ABA No.794 of 2019 by the Applicant in ABA No.811 of 2019.

7 It *prima facie* appears from the record that, by taking undue advantage of the fact that, the original owner of the land was a poor gullible agriculturist being either illiterate or semi-literate woman hailing from the lower strata of the society, the Applicants in ABA No.794 of 2019 in connivance with the Applicant in ABA No.811 of 2019, grabbed her land by executing the said two documents. It further appears that, without there being actual Power of Attorney in favour of Applicant in ABA No.811 of 2019 in existence, all the Applicants in connivance with each other, have systemically and in a well designed manner usurped and/or grabbed the landed property of Smt. Babybai Rumade i.e. mother of informant.

It is to be noted here that, the most important document i.e. the Power of Attorney dated 26th May, 1995, on the basis of which the alleged constituted attorney i.e. Applicant Joseph George has transferred

the said land in favour of the Applicants in ABA No.794 of 2019 is not traceable. It is therefore clear that, the Applicants in connivance with each other and by creating bogus documents i.e. Power of Attorney dated 26th May, 1995 and Sale Deed dated 30th November, 1996, have usurped and/or grabbed the landed property of Smt. Babybai Rumade.

8 It further *prima facie* appears that, the then Sub-Registrar of Assurances, Murbad namely Mr. V.B. Parab has helped all the Applicants herein in execution of the said documents. For recording this observation, reliance is placed on a communication dated 2nd September, 2021, issued by the Sub-Registrar of Assurances, Class-I, Murbad wherein the concerned Authority has stated that, while executing the said document in question i.e. the Sale Deed dated 30th November, 1996, the then Sub-Registrar Mr. V.B. Parab might have helped the Applicants herein in executing the said document.

Learned APP, on instructions from the Investigating Officer, who is personally present in the Court submitted that, the Investigating Agency is considering to implead Mr. V.B. Parab as an accused in the present crime.

9 Record indicates that, Mr. Bharat Yashwant Gondhali and Mr. Sandip Ramdas Nagvekar are the alleged witnesses to the execution of the Sale Deed dated 30th November, 1996. The Investigating Agency has recorded statements of Mr. Bharat Gondhali and Mr. Sandip Nagvekar

under Section 161 of the Cr. P.C. In their statements, both the witnesses have categorically denied of being present before the concerned Sub-Registrar of Assurances on 30th November, 1996 and their signatures on the said document. Witness Mr. Bharat Gondhali, has further categorically stated that, he neither saw Smt. Babybai Rumade in the office of Mr. Joseph George i.e. Applicant in ABA No.811 of 2019, at Murbad at any point of time nor saw any Power of Attorney allegedly executed by Smt. Babybai Rumade in favour of Mr. Joseph George. The statements of the said two witnesses assumes much importance at least at this stage.

10 As noted earlier, the Applicants in ABA No.794 of 2019 and Applicant in ABA No.811 of 2019 are shifting burden of having said Power of Attorney dated 26th May, 1995 upon each other. However, as a matter of fact, the said most important document under which Applicant Mr. Joseph George, sold the suit property in favour of the Applicants in ABA No.794 of 2019 is not traceable. It is a part of investigation of the concerned Investigating Officer to trace it out and according to this Court, it may not possible without there being custodial interrogation of all the Applicants.

Though, the learned counsel for the Applicants in ABA No.794 of 2019 contends that, his clients did not receive the said Power of Attorney, the fact on record remains that, without their being any Power of Attorney in favour of Applicant Joseph George his clients have indulged into executing a Sale Deed dated 30th November, 1996 thereby usurping Smt.

Babybai Rumade's landed property.

11 As far as the contention of the learned counsel for the Applicants that, the Applicants in last about two years have attended the Investigating Officer on several occasions and therefore their custodial interrogation is not necessary is concerned, a useful reference at this stage can be made to the decision of the Hon'ble Supreme Court in the case of *State Rep. by The C.B.I. vs. Anil Sharma [(1997) 7 SCC 187]*, wherein the Honourable Supreme Court has held that, the Custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

The Hon'ble Supreme Court in the case of *Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav and Anr. reported in 2005 Supreme Court Cases (Cri.) 489*, has held that, "*It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation*

of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law.”

In view of the said principle enunciated by the Hon’ble Supreme Court, the contention of the learned counsel for the Applicants that, if the Application of the Applicants is rejected, their personal liberty will be put in jeopardy, cannot be accepted.

12 Perusal of record of investigation clearly indicates that, there is sufficient material available to show the clear complicity of the Applicants in the present crime. Their custodial interrogation is necessary to unearth the entire truth behind the present crime and for taking the investigation to its logical end.

In view of the above and after taking into consideration the serious allegations against the Applicants, gravity of offence and the need of custodial interrogation of the Applicants, this Court is of the considered view that, the Applicants do not deserve to be protected by pre-arrest bail.

Both the Applications are accordingly rejected.

13 At this stage, both the learned counsel appearing for the respective Applicants submitted that, the interim relief which is running in

favour of the Applicants be extended by four weeks to enable them to challenge the present Order before the Hon'ble Supreme Court.

At their joint request, the effect and implementation of the present Order is stayed for a period of two weeks from the date of uploading of it on the official Website of Bombay High Court.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed
by SANJIV
SHARNAPPA
MASHALKAR
Date: 2021.11.17
18:19:33 +0530