

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1583 OF 2021

Buntty Pesumal Dhanwani Applicant

versus

State of Maharashtra Respondent

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- Mr.Monish Bhatia, Advocate for Applicant.
- Smt.M.R. Tidke, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 08th JULY, 2021
(Through video conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.9/21 registered with Hill Line Police Station, Dist-Thane, on 16/01/2021, under sections 406, 420 r/w 34 of the Indian Penal Code.

2. The FIR is lodged by one Jamat Haseja. He has stated that he has a piece of land near Nijdharm Ashram, Gandhi Road, Ulhasnagar, admeasuring 242.50 sq.mtrs. There is a adjacent land at City Survey No.26190 (P) admeasuring 136.90 sq.mtrs

owned by Puransingh Labhana, Pratapsingh Labhana and Janakibai Labhana. It is alleged that in May 2019, these owners approached the informant. They showed willingness to sale this adjacent land to the informant. They represented to the informant that the owners had executed a power of attorney in favour of Jayprakash Kalyani. The possession of that land was with Ashok Tekwani. The power of attorney was registered on 04/01/2008 with the Sub-Registrar's office at Ulhasnagar. The informant decided to purchase that adjacent piece of land for Rs.21,50,000/-, out of which Rs.10,75,000/- were to be paid to Ashok Tekwani. Out of that, the informant had paid Rs.1,00,000/- to one of the owners Puransingh Labhana and Rs.75,000/- to Ashok Tekwani.

3. On 25/05/2020 Jayprakash Kalyani as a power of attorney holder and Ashok Tekwani as a person in possession of the land; executed agreement for sale in favour of the informant. It was decided that the informant was to get possession of that piece of land. Then construction permission

was to be obtained from Ulhasnagar Municipal Corporation. After the construction was completed, the entire consideration amount was to be paid to the owners Puransingh and others and to Ashok Tekwani. After that, the sale deed was to be executed and registered. It is the case of informant that he obtained possession and requisite permissions. He completed the construction. Thereafter on 21/05/2019, he had paid Rs.9,75,000/- to Puransingh and others as the owners of the property and Rs.10,00,000/- to Ashok Tekwani. On 05/11/2020 he went to the Sub-Registrar's office after preparing the document of sale deed. He went there with Jayprakash and Ashok. He came to know that the original owners Puransingh and others had sold that land through a registered sale deed to the present Applicant. The sale deed was registered vide document No.1750/2020. The informant realized that Puransingh and others cheated him. On this basis FIR is lodged.

4. Heard Mr.Monish Bhatia, learned counsel for the Applicant and Smt.M.R. Tidke, learned APP for the State.

5. Learned counsel for the Applicant submitted that he was a bonafide purchaser. He had nothing to do with the transaction between the original owners and the informant. He submitted that he had taken a search report before entering into the transaction with the original owners. Learned counsel relied on the title certificate-cum-search report dated 10/11/2020, which is annexed to this application at Ex.F-A. He submitted that once the Applicant had this search report and once that search report did not show any encumbrance in favour of the informant, the Applicant was well within his rights to purchase that land.

6. He submitted that the transaction between the original owners and the informant did not travel beyond the agreement of sale dated 25/05/2019 and even that document was not registered. He submitted that sale deed was not executed and therefore the property was not transferred in the name of the first informant. There was no stay from any competent Court.

Therefore the Applicant remained a bonafide purchaser. He has nothing to do with the alleged offence.

7. Learned APP opposed this application and she specifically relied on the statement given by Sub-Registrar Gautami.

8. I have considered these submissions. Sub-Registrar Gautami has stated in her statement that on behalf of first informant his advocate Jeswani had given a letter dated 10/11/2020 objecting to registration of any sale transaction in respect of the said land. She had told the person who had submitted that letter, that, registration of document cannot be stopped unless there was an order of a competent Court putting restrictions on the registration. She has stated that when the Applicant and the original owners approached her for registration of document, she had shown them the objection letter given by Advocate Jeswani. In spite of that the Applicant and the owners insisted that she should register the sale deed.

Since she was duty bound to register the document, she registered the sale deed.

9. The stand taken by the Sub-Registrar was in accordance with the law. There was no impediment in registration of the sale deed. Sub-Registrar was not concerned with the dispute between the parties. In any case, as rightly submitted by learned counsel for the Applicant, the transaction between the original owners and the first informant had not travelled beyond execution of agreement for sale on a stamp paper. It was not even registered. Thereafter the sale deed was not executed and registered. Therefore ownership of the property remained with the original owners.

10. Learned counsel for the Applicant also relied on a notice issued on behalf of the original owners to the informant, Jayprakash Kalyani and Ashok Tekwani on 26/11/2020. In that notice, the stand was taken by the original owners that they had revoked the power of attorney executed in favour of Jayprakash

Kalyani. This notice shows that the original owners did not have any intention to go ahead with their transaction with the informant. The Applicant had nothing to do with the dispute between the original owners and the informant. In this view of the matter, there is considerable force in the submissions of learned counsel for the Applicant that the Applicant was a bonafide purchaser and no offence is committed by him. In this view of the matter, custodial interrogation of the Applicant is not justified. He can be protected by an order of anticipatory bail.

11. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.9/21 registered with Hill Line Police Station, Thane, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (ii) The Applicant shall attend the concerned Police Station as and when called and shall cooperate with the investigation.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)