

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

**ANTICIPATORY BAIL APPLICATION NO.1616 OF 2021**

Puransingh Mirchunsingh Labana & Ors. .. Applicants

Vs.

The State Of Maharashtra & Anr. .. Respondents

...

Mr. Monish Bhatia, for applicant.

Mr. Shyam Dewani with Chirag Chanani i/b Dewani Associates  
for Intervenor.

Mr. Y. Y. Dabake, A.P.P. for the State-Respondent.

...

Digitally signed  
by DNYANESHWAR  
ASHOK ETHAPE  
Date: 2021.09.29  
17:07:39 +0530

**CORAM : PRAKASH D. NAIK, J.  
DATE : 24<sup>th</sup> SEPTEMBER, 2021**

**PC.**

1. This is an application for anticipatory bail in C.R. No.I-09 of 2021 registered with Hill Line Police Station for the offences punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code (for short "IPC"). Subsequently Sections 465, 467, 468 & 471 of IPC were added.

2. The case of the prosecution is that the complainant has piece of land at Nijdham Ashram Gandhi Road Ulhasnagar. Sanad has been issued to him on 05.12.2018 by sub-Divisional Officer Ulhasnagar. Adjacent to his property, there is a property bearing No.64 city survey No.26190(p)

admeasuring 163.7/9 sq. yards. The said property owned by Burensingh Labana, Pratapsingh Labana, Janakibai Labana. In May 2019, the applicant, Janakibai, Jaiprakash Kalyani and Ashok approached the complainant and represented to him that they intend to sell the said property. They also stated that sanad of the said property is in the name of applicant and Smt. Jankibai Labana. The power of attorney in respect of the said property has been issued in favour of Jaiprakash Kalyani. Ashok Tekwani is in possession of the said property. The complainant then agreed to purchase the said property for consideration of Rs.27,50,000/-. Out of the said consideration Rs.10,75,000/- was paid. The cash of Rs.75,000/- was given to Ashok on 21.05.2019. On the same day Ashok Tekwani had executed notarized agreement of sale with the complainant. On the basis of the said agreement, it was decided to obtain permission to develop the property and it was agreed that the balance consideration is to be paid after the construction is completed and thereafter the agreement was to be executed. The possession of the property was handed over to the complainant. Documents were submitted to Corporation. Commencement Certificate was issued on 29.05.2019 and construction was completed. The balance amount of Rs.9,75,000/- was to be paid to the person who was in possession of the property. The amount of Rs.10,00,000/- was paid to Ashok Tekwani by way of cheque. The complainant, Jaiprakash Kalyani, Ashok Tekwani visited office of Sub-

Registrar on 05.11.2020 for verification of documents. The complainant thereafter came to know that on 27.11.2020 the applicant No.1 and others had executed registered sale deed with Banti Dhanvani. He obtained sale deed from the office of Registrar. It was executed in favour of Banti Dhanvani. Since the complainant was cheated, he approached the police station and lodged the FIR.

3. The Applicants had preferred application for anticipatory bail before the Court of Sessions. Interim relief was granted to them pending the application by the Learned Additional Sessions Judge, Kalyan by dated 28.01.2021. The application was subsequently rejected.

4. Learned counsel for the applicants submitted that the allegations in the FIR are false. The applicant Nos.1 and 2 are senior citizen aged about 74 and 68 years. The applicant No.3 is a lady. The predecessor of the applicants was displaced person and he had occupied 7063.7/9 sq. yard at Ulhasnagar Camp No.2 and was using the same for agricultural purpose. Jaiprakash Kalyani informed the applicants that they can get compensation from the Government and proposed them that power of attorney may be executed in his favour. Hence, the power of attorney dated 04.01.2008 was executed in favour of Jaiprakash Kalyani. The complainant and others are acting in connivance with each other with a view to falsely implicate the

applicants in the present crime with intention to grab property. Under the pretext of making several payments for obtaining conveyance, Jaiprakash Kalyani had opened joint account in the name of applicant which was not being operated by him. He started misusing power of attorney and hence the same was revoked on 08.11.2020. The applicants are not the authors of the agreement for sale dated 21.05.2019. The documents in favour of the complainant were executed in connivance with Jaiprakash Kalyani and Ashok Tekwani. Documents were executed by Jaiprakash Kalyani in favour of his associates. The case is based on unregistered sale deed dated 25.01.2019. It is not signed by the applicants. It was signed by the power of attorney holder Jaiprakash Kalyani and Ashok Tekvani against whom various complaints were lodged. The Stamp papers upon which the alleged agreement for sale was executed, were issued for the purpose of partnership deed in the name of Mr. Kalyani. The accounts are opened and operated by Jaiprakash Kalyani for different purpose and the payment made by the informant was transferred into the account. There are no receipts made by the applicant regarding payment of any amount towards the sale of property. The applicants were owner of the said property. On 06.02.2019 conveyance deed was made after the verification. The co-accused Banti Dhanvani had preferred application anticipatory bail before this Court, which has been allowed vide order dated 08.07.2021.

5. Learned APP submitted that specific role has been attributed to the applicants. In spite of the fact the documents were executed in favour of the complainant, the property was sold to another person. There is sufficient evidence against the applicants to show their complicity in the offence.

6. The complainant is represented by advocate. Written submissions were tendered on behalf of the complainant. Learned counsel representing the complainant submitted that specific role has been attributed to the applicants. They had represented themselves as owners of the property. Power of attorney is being given to the Mr. Jaiprakash Kalyani. The complainant had paid entire consideration. The document was executed with third person and the property was sold to that person by executing the sale deed. The applicants were involved in fabrication of documents. The applicants and others had approached the complainant and showed their willingness to sell their property. They themselves have represented that the power of attorney has been given to Jaiprakash Kalyani. The complainant had filed a suit before the Civil Court seeking declaration that the agreement dated 27.11.2020 is void document. There is strong evidence to show that the applicants had deceived the complainant and induced to part with consideration and thereafter by keeping the complainant in dark, sold the property to third person. The case of the co-accused who has been granted anticipatory bail

can be distinguished. He claims to be *bonafide* purchaser of the property. The applicants have taken entire sale consideration from the complainant and fraudulently sold the property to Banti Dhanvani. Sale deed is registered only in case the entire sale consideration is paid in advance. The investigation revealed that various cheques mentioned in the sale deed were not actually handed over or got cleared and only amount of Rs. 3,00,000/- as against 21,20,000/- was paid by Mr. Banti Dhanvani to the applicants, which show that sale deed executed with him was bogus. For the purpose of carrying out effective representation and investigation custodial interrogation is necessary.

7. I have perused the FIR and other documents. While granting anticipatory bail to the co-accused Banti Dhanvani this Court had observed that the power of attorney was executed in favour of Jaiprakash Kalyani which was subsequently cancelled. The transaction between original owner and first informant had not travelled beyond execution of agreement for sale on stamp papers, which was not registered. Thus, sale deed was not executed and registered. Ownership of the property remained with the original owner.

8. It is pertinent to note that documents were executed with the complainant on the basis of power of attorney. The applicants were not signatory to the said document, which is relied upon by the complainant as sale deed. The contention of

the applicants is that complainant and Jaiprakash Kalyani are acting in connivance with each other. Considering the factual aspects of this matter, custodial interrogation of the applicants is not necessary.

**ORDER**

- (i) Anticipatory Bail Application No.1616 of 2021 is allowed.
- (ii) In the event of arrest of the applicants in C.R. No.I-09 of 2021 registered with Hill Line Police Station, the applicant be released on bail 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 appear before the investigating officer as and when called for till the filing of the charge-sheet.
- (iv) Application stands disposed off.

**(PRAKASH D. NAIK, J.)**