

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

ANTICIPATORY BAIL APPLICATION NO. 86 OF 2021

Hanumant Bhausahab Lokhande Applicant
Versus
The State of Maharashtra Respondent

**WITH
INTERIM APPLICATION NO. 2299 OF 2021**

Darubai Bala Lakade **since deceased**
through her legal heirs Intervenors

In the matter between:
Hanumant Bhausahab Lokhande Applicant
Versus
The State of Maharashtra Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1704 OF 2021**

Pandurang Bhausahab Lokhande Applicant
Versus
The State of Maharashtra Respondent

**WITH
INTERIM APPLICATION NO. 2298 OF 2021**

Darubai Bala Lakade **since deceased**
through her legal heirs Intervenors

In the matter between:
Pandurang Bhausahab Lokhande Applicant
Versus
The State of Maharashtra Respondent

Mr. Narayan S. Pawar for Applicant in ABA/86/2021.
Mr. Prashant P. Raul for Applicant in ABA/1704/2021.
Mr. Ravindra S. Pachundkar a/w. Sanjay B. Bendre for Intervenor
in both ABAs.
Smt. Veera Shinde, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 23rd SEPTEMBER, 2021

P.C. :

1. Both these applications are decided by this common order because they arise out of the same investigation, the same offence and the allegations are also the same. There is history behind these proceedings.

2. The First Information Report (for short 'F.I.R.') is lodged on 15/05/2019 vide C.R.No.366 of 2019 at Shirur police station, Pune, under sections 416, 418, 420, 468, 463, 464, 465, 474 r/w. 34 of the IPC. The F.I.R. is the result of the order dated 21/07/2007 passed by the J.M.F.C. Ghodnadi, in Criminal Miscellaneous Application No.12 of 2004, under section 156(3) of the Cr.p.c. In spite of the fact that the order was passed on

21/07/2007, the police authorities took inordinately long time in registering the F.I.R. in May 2019. The present I.O. has filed an affidavit in that behalf. I propose to refer to the same in this order at the appropriate place.

3. Heard Shri. Narayan Pawar, learned counsel for the Applicant in A.B.A. No. 86 of 2021, Shri. Prashant Raul, learned counsel for the Applicant in A.B.A. No.1704 of 2021, Shri. Ravindra Pachundkar, learned counsel for the Intervenors and Smt. Veera Shinde, learned APP for the State in both applications.

4. The F.I.R. was a result of the allegations made in the complaint before the learned Magistrate. The complaint was made by one Darubai Lakde. She was 98 years of age at the time of lodging of her complaint. Unfortunately, during the pendency of the proceedings she passed away on 06/07/2004. The allegations in the complaint are that, both applicants are brothers. There is one more brother Dattatray Lokhande who was mentioned as accused No.2. The fourth accused is maternal aunt of the brothers. The subject matter was ancestral land bearing Gat Nos.88, 90, 48, 75/, 75/2, 45, 50, 46, 40, 272 and 637 in village Ranjangaon. The

informant was having her share in Gat Nos.45, 50, 46, 40, 272 and 637. The accused, in collusion, filed R.C.S.No.364 of 2001 against the informant as a defendant in the court of C.J.J.D., Ghodnadi. The matter was taken to Lok Adalat and there on 21/10/2001, false compromise document was produced. The accused No.4 was made to stand as the defendant. She impersonated herself as the complainant Darubai Lakde. A compromise Decree was signed. It was mentioned in the decree that the complainant Darubai had no concern with the land and that the accused therein i.e. accused/applicants herein were entitled for all the rights in respect of those pieces of land. These are the basic allegations. The thumb impression on that document was not of Darubai. It was forged.

5. Both learned counsel appearing for the applicants submitted that, there is gross delay in lodging of F.I.R. The compromise decree was executed in the year 2001 and the F.I.R. is lodged in the year 2019. They submitted that there was a report sent by Finger Print expert mentioning that the finger prints could not be compared as the prints were not clear. That report was dated 20/01/2007. It was produced on record at Exhibit 10 in

Criminal M.A.No.12 of 2004 before the learned Magistrate. In the same proceedings, subsequently, in July 2007 the learned Magistrate passed an order directing the investigation under section 156(3) of the Cr.p.c. Both the learned counsel, therefore, submitted that, in spite of this, as of today now there cannot be any material to show that the finger print expert's opinion would be the correct opinion. Darubai has passed away. Learned counsel for the applicant Hanumant submitted that the other brother Dattatray was already arrested and is released on bail. Therefore, he submitted that, applicants' custody is not necessary. Both learned counsel submitted that, considering the delay in the background of the case, applicants' custody will not serve any purpose.

6. Learned APP opposed this application. She submitted that, after the first report; the Finger Print Expert had sent another report observing that thumb impression of the complainant and thumb impression on the consent pursis before the Lok Adalat did not match and, therefore, the offence was committed. This is a serious case where the consent decree is obtained by fraud by the

applicants. She invited my attention to the affidavit filed by the Police Inspector Shri. S. K. Raut giving explanation of the circumstances as to why F.I.R. was lodged in 2019.

7. I have considered these submissions. The affidavit filed by the present I.O. mentions that, since 2007 to 2016 there was no progress in the investigation. Beyond stating this, there is no explanation offered as to why there was no progress in the investigation. Learned Magistrate had directed the investigation vide his order dated 21/07/2007. Thus, there appears to be some substance in the contention of learned counsel for the intervenor that, it was deliberately done to help the accused persons.

8. In this situation, I am not giving much importance to the argument that the F.I.R. is lodged much belatedly. The court and the authorities were approached immediately and it is only because of deliberate or otherwise inaction on the part of the investigating agency, that F.I.R. was not lodged immediately. In the meantime, the original complainant had passed away, still awaiting justice. The order passed by the learned Magistrate on 21/07/2007 in Cri. M. A. No.12 of 2004 is clear enough. It makes a reference to

the report of the Finger Print expert. The said report dated 16/05/2007 mentions that both these thumb impressions were different, meaning thereby the thumb impression on the consent pursis before the Lok Adalat was obviously obtained by impersonation and forgery. The offence assumes seriousness because it was committed in the court proceedings, therefore, it cannot be taken lightly. Prima facie the applicants' involvement is made out. They are the beneficiaries. They were signatories to that consent pursis. They were knowing the complainant and in spite of that, this forged consent pursis was filed before the Lok Adalat and the applicants have tried to take advantage of that decree. I am informed that the matter is now remanded back before the regular court and the suit is still going on. Considering all this history, custodial interrogation of the applicants is necessary to find out details of execution of that consent pursis. Similarly, considering the gravity of the allegations and fraud committed in the court proceedings, even otherwise, applicants are not entitled for protection of anticipatory bail order.

9. Therefore, both the applications are rejected.

10. The inaction on the part of the then I.O. also needs to be dealt with. Therefore, copy of this order and the relating documents shall be forwarded to the Superintendent of Police having control over Shirur police station. He shall depute a responsible higher officer to conduct inquiry regarding gross delay in lodging the F.I.R. and to take proper action in this case.

11. Both the applications are disposed of accordingly.

12. With disposal of these applications, nothing survives in the interim applications, therefore, both the interim applications are also disposed of.

(SARANG V. KOTWAL, J.)