

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

ANTICIPATORY BAIL APPLICATION NO.1298 OF 2019

Suresh Shrirang Avhale	 Applicant
versus	
State of Maharashtra	 Respondent

**WITH
INTERIM APPLICATION NO.461 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO.1298 OF 2019**

Diilpraj Dnyaneshwar Bhokare	 Intervenor
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IN THE MATTER BETWEEN :

Suresh Shrirang Avhale	 Applicant
versus	
State of Maharashtra	 Respondent

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- Mr.Aniket Nikam i/b. Aashish Satpute, Advocate for Applicant.
- Mr.Hrishikesh R. Avachat, Advocate for Intervenor.
- Mr.S.H. Yadav, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 11th MARCH, 2021**

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.460/2019 dated 11/05/2019 registered with

Lonikand Police Station, under section 420 of the Indian Penal Code.

2. Heard Mr.Aniket Nikam, learned counsel for the Applicant, Mr.Hrishikesh R. Avachat, learned counsel for Intervenor and Mr.S.H. Yadav, learned APP for the State.
3. The FIR is lodged on 11/05/2019 by one Dilipraj Dnyaneshwar Bhokare. He has stated that on 09/10/1988 Shrirang Sopan Avhale, Pandurang Sopan Avhale and Indubai Mahadeo Yewale, who were owners of the land situated in Gat No.41 admeasuring 55 R at Avhal Wadi, had sold that land to one George Mathews. The informant had purchased that land from George on 10/07/1989 through a sale deed. It is his case that his name was not immediately entered in the 7/12 extract and ultimately it was entered on 31/03/2003. He has stated that on 29/10/2018 his crop in that land was destroyed by the present Applicant. The present Applicant is the son of the original owner Shrirang Avhale. The informant therefore had given his FIR to Lonikand police station, which was registered

vide C.R.No.1151/18 on 19/10/2018 u/s 143, 147, 427, 426 of IPC. Thereafter the informant made enquiries and he came to know that the same land was sold by the present Applicant to one Kasturabai Chandere. He came to know that the Applicant's father Shrirang Avhale and other co-owners Pandurang Avhale and Indubai Yewale had executed power of attorney dated 26/07/2000 in favour of the present Applicant. Using that power of attorney, he had sold the same land to Kasturabai Chandere. On this basis, the informant has lodged this FIR.

4. Learned counsel for the Applicant Mr.Nikam submitted that when the Applicant had sold the land to Kasturabai Chandere as a power of attorney holder of the original owners, at that time, George Mathews's name was not entered in the 7/12 extract. That itself shows that the sale deed purportedly executed by the Applicant's father, was not acted upon and therefore Mathews had no further right to sell it to the present informant. He submitted that there are already two civil suits pending between the parties, since year 2016 and 2018. The

informant is one of the defendants in those suits and inspite of that, the FIR is lodged belatedly in May 2019.

5. Learned counsel for the Intervenor as well as learned APP opposed this application. They submitted that the Applicant's father had already sold that land to Mathews in the year 1988. Learned counsel for the Intervenor submitted that the Applicant's father was an attesting witness to the sale deed executed by Mathews in favour of the first informant. He therefore submitted that inspite of this knowledge, the original owners i.e. the Applicant's father and others gave power of attorney to the present Applicant. This shows their fraudulent intention. Learned APP has filed affidavit of the Investigating Officer explaining current status of the investigation. In that affidavit basically the averments made in the FIR are supported. It is also averred that in the civil suit filed by the present Applicant, injunction was not granted in favour of the Applicant.

6. I have considered these submissions. The Applicant has preferred Regular Civil Suit No.1733/2016 in the Court of Civil

Judge, Senior Division, Pune, with prayers for declaration that the sale deed dated 10/07/1989 executed by George Mathews in favour of the first informant be declared illegal and void.

7. Subsequent owner Kasturabai has also filed her own civil suit vide Regular Civil Suit No.1795/2018 in the Court of Civil Judge, Senior Division, Pune, against George Mathews and present Applicant for similar reliefs and also for permanent injunction. This suit was filed in the year 2018. Thus the informant was a party to two previous suits filed in the years 2016 and 2018 and yet on his own, he did not take any steps in approaching civil Court by filing civil suit or making complaint to the authorities immediately. Instead, this FIR was lodged in 2019. The transaction is old. It was purportedly entered into in the year 2000. The FIR is lodged almost after 20 years and after institution of civil proceedings. At this stage, custodial interrogation of Applicant is not necessary. Prima facie it appears to be a civil dispute between the parties, which can be decided by a competent civil court. In this view of the matter, the Applicant can be protected by an order of anticipatory bail.

8. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.460/2019 dated 11/05/2019 registered with Lonikand Police Station, 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) With disposal of this anticipatory bail application, Interim Application No.461 of 2019 in Anticipatory Bail Application No.1298 of 2019 is also disposed of. In any case, I have heard the learned counsel for the Intervenor.
- (iv) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)