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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2668 OF 2019
WITH
ANTICIPATORY BAIL APPLICATION NO.2494 OF 2019

Ajaykumar Ramchandra Mishra ..Applicant
VS.
The State of Maharashtra ..Respondent

Mr. Akhilesh Dubey a/w. Mr.Amit Dubey, Mr.Rajuram Kuleriya i/b Law Counsellors for the applicant.
Mr. Prashant Maggu a/w. Sujender Yadav for intervener.
Mr. N.B. Patil, APP for State.
Mr.Sachin Kothmire, PI and Mr.Mahendra Girashe - Mira Road Police Station, Mr.Y.B. Shirsath, PSI and Mr.Kini - Bhayander Police Station present.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 8, 2021

P.C. :

. Heard Mr.Akhilesh Dubey, learned Counsel for the applicant, Mr. N.B. Patil, learned APP for the respondent - State, Shri Prashant Maggu, learned Counsel for the complainant - intervener.

2. These are two applications for pre-arrest bail in respect of the offences under sections 420, 465, 467, 468,

471, 473, 120(B) of Indian Penal Code, 1860 being FIR No. 8 of 2017 registered at Mira Road Police Station by the complainant Mr. Hemprakash Hiraji Patil. The other FIR is numbered as 430 of 2018 dated 15/11/2018 by the complainant -Mr.Otaram Jasaji Chaudhary. The offences arise out of the allegations of land grabbing in respect of the same property by two different persons.

3. The allegations in the FIR in brief are that the complainant Mr. Hemprakash Hiraji Patil is the grandson of one Mr.Jayram Kamalya Patil. The complainant is resident of Navghar, Bhayander (East) and owns ancestral agricultural lands at various places. His grandfather Mr.Jayram Kamalya Patil was the only legal heir in respect of the property in respect of which the offence is alleged. Mr.Jayram Kamalya Patil expired on 02/10/1971, whereupon the name of his wife and son Smt. Janibai Jayram Patil and Mr. Hiraji Jayram Patil came to be recorded in the 7/12 extracts vide mutation entry no. 2976. Smt. Janibai died on 02/05/1999 and Mr.Hiraji died on 04/02/2014 and accordingly the said land was further transferred vide

mutation entry no. 2223 in the name of complainant, his mother Smt.Laxmibai, two brothers and two sisters. It is alleged that when the complainant and his family members approached the office of the Talathi Saja Navghar, Bhayander (East) to enter their names in the record of rights, they learnt about a fabricated and bogus registered deed no. 8554/2992 dated 28/09/1991 which is an agreement for development-cum-sale executed by Smt. Janibai Jayram Patil and Shri Hiraji Jayram Patil in favour of one Shri Otaram Jasaji Chaudhary for consideration of an amount of Rs. 2,75,000/-. It is alleged that Shri Otaram Jasaji Chaudhary had submitted false and fabricated documents and also made forged signatures of complainant's father and his mother. It is further alleged that on 16/02/1995, said Shri Otaram Jasaji Chaudhary sold the said land to one Imamuddin Shaikh (co-accused) through deed of conveyance for a consideration of Rs.6,75,000/-. It is alleged that the said document has been registered with Sub-Registrar's office on 11/12/1997. On further enquiries with the office of the Sub-Registrar, it was revealed to the complainant and his family that applicant has submitted false and fabricated documents and also made forged signatures of the complainant's father and his grandmother. Even the subsequent document being deed of conveyance dated 11/12/1997 is a forged document. Thereafter the revenue proceedings were initiated for re-entering the names of the complainant over the said property. The complainant filed Special Civil Suit No. 37 of 2016 against co-accused namely Imamuddin Nihaluddin Shaikh and others for declaration and other reliefs. The co-accused - Imamuddin filed Special Civil Suit No. 93 of 2017 against the complainant before the Civil Court, Thane claiming rights over the said property and the Suits are pending adjudication.

4. Pursuant to the filing of the FIR on 05/01/2017, during the course of investigation, co-accused - Imamuddin came to be arrested on 11/11/2018. The charge-sheet has been filed before learned Judicial Magistrate First Class vide RCC No. 458 of 2019. The applicant is shown as a wanted accused. The co-accused - Imamuddin has been released

on bail.

5. Learned Counsel for the applicant submitted that the applicant - Ajaykumar Ramchandra Mishra is not named in the FIR and he has no concern with the alleged offence. It is only on the basis of the suspicion that the applicant is sought to be implicated. Learned Counsel submitted that during the course of investigation, the co-accused - Imamuddin has stated that the applicant is his partner, which statement was made while in police custody, implicating the applicant, should not be relied upon. Learned Counsel then submitted that the developer with whom co-accused - Imamuddin was negotiating named the applicant as the one who accompanied Imamuddin during the course of the discussions. Learned Counsel submitted that Shri Roshan Badrilal Malu - developer as well as the agent - Miraj Ebadut Khan who earlier named only Imamuddin in their statements, later, on the insistence of police stated about involvement of the applicant as a partner of Imamuddin. Learned Counsel submitted that in

the panchnama dated 16/03/2017, applicant is shown as panch witness which belies the case of the prosecution that the applicant is absconding. He further submits that there are civil Suits pending between the parties and in none of the Suits, the applicant is impleaded. According to him all allegations are made against Imamuddin and the investigating machinery appears to have pressurized Imamuddin and other witnesses to implicate the applicant. Learned Counsel relied upon the decision of the Hon'ble Supreme Court in the case of **Selvi and others Vs. State of Karnataka (2010) 7 Supreme Court Cases 263** in support of his contention that It is quite possible that a person suspected or accused of a crime may have been compelled to testify through methods involving coercion, threats or inducements during the investigative stage. For all these reasons, he submits that the applicant deserves to be granted pre-arrest bail.

6. Learned APP and learned Counsel for the complainant - respondent no.2 opposed the applications and submitted that this is a clear case of land grabbing, the

applicant being the mastermind.

7. Heard. The applicant is not named in FIR. Further, name of the applicant does not figure in any of the documents which are alleged to be forged and fabricated. The co-accused - Imamuddin is the signatory to alleged fraudulent documents pertaining to transfer of the title over the suit property. Even the Special Civil Suit No. 37 of 2016 has been filed by Smt. Laxmibai Hiraji Patil and others against Shri Otaram Jasaji Choudhary and the co-accused - Imamuddin seeking a relief of declaration that the plaintiffs - Smt. Laxmibai Hiraji Patil and others claiming that they are the absolute owners and that defendants have no right, title interest over the suit property. The co-accused - Imamuddin has filed Special Civil Suit No. 93 of 2017 for declaration that the deed of conveyance dated 16/02/1995, deed of confirmation dated 11/12/1997 in pursuance of document dated 01/10/1991 registered at serial no. 8554/91 executed by defendant no.1 (Shri Otaram Jasaji Choudhary) in favour of the plaintiff- Imamuddin in respect of suit property are legal and subsisting. The plaintiff-

Imamuddin prayed for declaration that he is the absolute owner of the suit property and for declaration and injunction against defendants no.2 to 7 (Smt. Laxmibai Hiraji Patil and others) that they have no right, title and interest or claim in the suit property. My attention is invited to Civil Writ Petition no. 6300 of 2021 filed by Imamuddin for directions to the respondent - Corporation to act on his complaint. The co-accused - Imamuddin has since been arrested and released on bail. During the course of investigation and after recording the statement of witnesses, it was revealed that though the documents are in the name of co-accused - Imamuddin, it is the applicant who has engineered the forgery and fabrication. It is pertinent to note that the co-accused - Imamuddin has in his statement during the course of the investigation, mentioned the role of the applicant in preparing the development agreement and other documents. Learned Counsel for the applicant vehemently submitted that the applicant has no concern with the co-accused - Imamuddin. To support the stand that they are partners, learned APP relied upon the copy of the notary register wherein there is reference of the development agreement dated 12/02/2016 and the name of the executant is shown as Imamuddin and the applicant. In my opinion, it is therefore necessary that the document dated 12/02/2016 needs to be produced and it can be produced only by the applicant as Imamuddin has stated that the said document is with the applicant. It is pertinent to note that one of the witness - Shri Roshan Badrilal Malu, who was to develop the property pursuant to an agreement which he executed with Imamuddin, has stated that the applicant was present at the time of negotiations and that an amount of Rs. 10 lakhs was paid to the applicant in his capacity as a partner. Learned APP also relied upon the investigation papers which consist of bank account statement of the M/s. Shree Krishna builders wherein there is entry dated 17/06/2016 of having transferred the amount of Rs.10 lakhs by RTGS in the account of the applicant. Learned Counsel for the applicant then tried to submit that the said amount of Rs. 10 lakhs was transferred to the account of co-accused - Imamuddin in 2018, as

Imamuddin and the applicant shared a friendly relationship. Thus, there is material to indicate that in respect of very suit property which is the subject matter of the alleged offence, an amount of Rs. 10 lakhs was transferred by the developer in favour of Ajaykumar Mishra - the applicant. It is also pertinent to note that the deed of confirmation dated 11/12/1997, memorandum of understanding dated 18/03/1994 and general power of attorney and deed of conveyance dated 16/02/1995, were executed on stamp paper of Rs. 50/-. There is report by the Forgery Detection Cell of the India Security Press that these stamp papers are tampered.

8. Prima facie, based on the materials referred to hereinabove, especially in view of the entry in the notary register regarding the development agreement dated 12/02/2016 which Imamuddin says that the same is in possession of the applicant; the entry in the bank account of the developer of having transferred amount of Rs. 10 lakhs in favour of the applicant; the report of the Forgery Detection Cell of the India Security Press stating that the

stamp papers on the basis of which co-accused - Imamuddin claims title are tampered; disclose the involvement of the applicant. The custodial interrogation of the applicant is necessary as it is alleged that the applicant is the mastermind behind the land grabbing case based on forged and fabricated documents prepared by him. The register maintained in respect of the registered documents in the Sub-Registrar office reveals that the entry in respect of Sr.No. 8554 pertaining to the subject land is missing.

9. Apart from what is stated above, the applicant's antecedents are required to be considered. My attention is invited to the order passed by this Court on 24/06/2016 in Anticipatory Bail Application No. 679 of 2016 filed by the applicant and co-accused - Imamuddin in connection with Crime No. I-35 of 2016 registered with NRI Sagari Police Station, Panvel for the offences punishable under sections 420, 465, 467, 468, 471 read with section 34 of the Indian Penal Code, where allegations are somewhat similar to the

one in the present case. This Court for the reasons recorded rejected the application for anticipatory bail. It may be that the applicant was not arrested as he was granted default bail, nonetheless, it is a matter of record that pre-arrest bail in respect of a similar offence involving the applicant is rejected.

10. Reliance placed by learned Counsel for the applicant on the decision of the Hon'ble Supreme Court in the case of **Selvi and ors** *(supra)* may not come to the aid of the applicant as the question which Their Lordships were considering was the results obtained through the involuntary administration of either of the tests i.e. the narcoanalysis technique, polygraph examination and the BEAP test for the purpose of meeting investigation efforts in criminal case.

11. There are serious allegations of land grabbing made against the applicant for which the custodial interrogation of the applicant is necessary, therefore, it is not possible to grant pre-arrest bail to the applicant The

applications are rejected.

12. The applicant was granted interim protection by an order of this Court on 06/12/2019 in both the applications. The learned Counsel for the applicant prays for continuation of the interim orders for a period for 4 weeks. Considering that the interim protection is in operation since 06/12/2019, the same is continued for a period of 4 weeks from today.

(M. S. KARNIK, J.)