

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

ANTICIPATORY BAIL APPLICATION NO.2736 OF 2019

Suryakant Pandharinath Pathade	 Applicant
versus	
State of Maharashtra	 Respondent

**WITH
INTERIM APPLICATION NO.100 OF 2020
IN
ANTICIPATORY BAIL APPLICATION NO.2736 OF 2019**

Kailas Baban Badekar	 Intervenor
----------------------	-----------------

IN THE MATTER BETWEEN :

Suryakant Pandharinath Pathade	 Applicant
versus	
State of Maharashtra	 Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.2744 OF 2019**

Shrinath Eknath Devkar & Anr.	 Applicants
versus	
State of Maharashtra	 Respondent

**WITH
INTERIM APPLICATION NO.1763 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO.2744 OF 2019**

Kailas Baban Badekar	 Intervenor
----------------------	-----------------

MANUSHREE
V
NESARIKAR

IN THE MATTER BETWEEN :

Digitally signed by
MANUSHREE V
NESARIKAR
Date: 2021.09.24
17:49:13 +0530

Shrinath Eknath Devkar & Anr.	 Applicants
versus	
State of Maharashtra	 Respondent

.....

- Mr.Abhishek R. Avachat, Advocate for Applicant in ABA No.2736/2019.
- Mr.Vikas B. Shivarkar, Advocate for Applicant No.ABA No.2744/2019.
- Mr.Y.M. Nakhwa, APP for the State/Respondent in both ABAs.
- Mr.Anand Jondhale a/w, Yashoda Jondhale, Rajnandini Jondhale a/w Ajay Jondhale i/b. Jondhale and Co. for Intervenor in both ABAs.

CORAM : SARANG V. KOTWAL, J.
DATE : 22nd SEPTEMBER, 2021

P.C. :

1. Both these application are decided by this common order because they arise out of the same investigation and same registered offence. For the sake of convenience, the Applicants are referred to by their designation or by their names.
2. The Applicant Suryakant Pandharinath Pathade was the Circle Officer at the relevant time. Today he is a Nayab Tahasildar. The Applicants Shrinath and Sonali Devkar are the purchasers of the property, which is the subject matter of the FIR.
3. The Applicants are seeking anticipatory bail in connection with C.R.No.783/2019 dated 09/11/2019 registered

with Loni Kalbhor Police Station, under sections 167, 193, 199, 200, 420, 468, 471 r/w 34 of the Indian Penal Code.

4. The FIR is lodged by one Kailas Baban Badekar. He has stated that his family has an ancestral land at village Uruli Kanchan, Taluka Haveli, District-Pune, bearing Gat No.276 admeasuring 2 hector 26 R. The original owners were the informant's grandfather Tukaram Ram Badekar and father Baban Badekar. After their death, the informant and other family members are the legal heirs and the land is in their possession. Baban died on 26/04/2006 and Tukaram, the grandfather of the informant, died on 02/09/2010. The land was categorized as Mahar Watan and therefore regrant as well as permission for sale was necessary for any transaction of that particular land. The allegations are that, the accused purchasers in collusion with each other, gave an application to the authorities for issuing order of regrant for the said land. It is specifically alleged that the application was not signed by the informant and other legal heirs. The application was forged. The competent authority

had passed order of regrant. There are allegations that when the matter was sent for enquiry before the Applicant Suryakant Pathade, as the Circle Officer, certain statements were recorded by him. There are allegations that the informant's mother Kamal passed away on 28/01/2007. In spite of that, the statement in her name was recorded on 04/05/2007. This obviously was done by recording statement of some imposter. On these allegations the FIR was lodged. Initially a private complaint was lodged and order under section 156(3) was passed and pursuant to that order, the FIR was lodged.

5. Heard Mr. Abhishek R. Avachat, learned counsel for the Applicant in ABA No. 2736/2019, learned counsel Mr. Vikas B. Shivarkar for Applicant in ABA No. 2744/2019, Mr. Anand Jondhale, learned counsel for Intervenor and Mr. Y.M. Nakhwa, learned APP for the State.

6. Learned counsel for the Applicant Mr. Abhishek Avachat submitted that the Applicant Pathade is a Circle Officer and he

was not knowing any of the parties personally. Therefore whoever remains present before him with some identification, he has to record their statement. Therefore at the highest it can be alleged that he did not perform his duty diligently. But that did not mean that there was criminal intention on his part or that he colluded with others in committing that offence.

7. Learned counsel Mr.Vikas Shivalkar for the other accused submitted that the informant's father had executed an agreement for sale, in respect of that land in favour of these two Applicants Shrinath and Sonali Devkar. However, further steps were not taken by legal heirs of Baban and therefore the Applicant Shrinath Devkar had filed Special Civil Suit No.833/2008 in the Court of 9th Jt. C.J.S.D. for specific performance against the first informant and his other family members. The suit was decreed in favour of the Applicant Shrinath Devkar on 08/03/2010. In that judgment it was specifically recorded that the statement of the deponents in that suit including that of the first informant Kailas was recorded by

the accused circle officer on 04/05/2007 and yet the informant had not raised any objection about the same. The complaint is lodged much belatedly in the year 2019. He submitted that the Applicants Shrinath and Sonali Devkar are the bonafide purchasers and there is a decree of competent Court running in their favour. In spite of that these false allegations are made against the present Applicants. In any case, they had nothing to do with the applications for regrant of the said land as Mahar Watan, because as per the agreement it was the duty of the seller to seek all the permissions from the competent authority. The Civil Court in the operative part of the judgment had directed the informant and others to execute a sale deed in favour of the Applicant Shrinath. The Applicants Shrinath and Sonali Devkar had paid Rs.5,00,000/- and about Rs.14,25,000/- were balance, which were directed to be paid by them.

8. Learned counsel for the Intervenor submitted that on 04/05/2007 even the informant's statement was not recorded. Even those statements are either forged or are recorded through

some imposter. He submitted that allegations in the FIR are in respect of forgery and impersonation for which the Applicants' custody is necessary.

9. Learned APP relied on the allegations in the FIR and in particular about the allegations of forgery of signatures and statements made before the authorities.

10. I have considered these submissions. It is difficult to observe with certainty that the Applicant Pathade had knowingly recorded a statement in the name of a dead person. There is possibility that he relied on the representation made before him about the identity of the person whose statement he has recorded. Therefore after more than 14 years, it would be difficult to permit custodial interrogation of the Applicant Pathade, who is a public servant.

11. As far as two other Applicants are concerned, they were the purchasers of the property. As per the agreement for

sale it was duty of the seller to get all the permissions. Therefore there is some substance in the contention of Mr.Shivarkar that they were not required to make any efforts to get the regrant or permission from the collector as it was the duty of sellers. The agreement for sale was executed by the father of the informant and specific performance decree was passed against the informant. After all this, the present FIR is filed belatedly in the year 2019. The Applicants are on interim protection since December 2019. There is long gap of period from alleged commission of offence in the year 2007. Similarly there is a long gap of period from December 2019, since when the Applicants are on interim protection. Therefore after all these years, in the background of above discussion, the custodial interrogation of the Applicants would not be justified. The questions are left open to be decided during trial. The observations are made only for the purpose of this anticipatory bail application. The investigation can go on. The custodial interrogation of the Applicant is not necessary. But they will have to cooperate with the investigation.

12. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.783/2019 dated 09/11/2019 registered with Loni Kalbhor Police Station, the Applicants in Anticipatory Application No.2736/2019 and Anticipatory Bail Application No.2744/2019 are directed to be released on bail on their furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each, with one or two sureties each, in the like amount.
- (ii) The Applicants shall attend the concerned Police Station as and when called and shall cooperate with the investigation.
- (iii) Application stands disposed of accordingly.
- (iv) With disposal of these Anticipatory Bail Applications, Interim Applications are also disposed of.

(SARANG V. KOTWAL, J.)