

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [ABA] NO. 417/2021.

Rajshree Amardeep Kamble and another.

-VERSUS-

The State of Maharashtra, through P.S.O. Gittikhadan, Nagpur.

CRIMINAL APPLICATION [ABA] NO. 436/2021.

Vasudeo Harishchandra Ingole

-VERSUS-

The State of Maharashtra, through P.S.O. Gittikhadan, Nagpur.

CRIMINAL APPLICATION [ABA] NO. 465/2021.

Kamlesh @ Kiran Dinkar Samarth

-VERSUS-

The State of Maharashtra, through P.S.O. Gittikhadan, Nagpur.

Shri A.S. Manohar, Shri A.A. Naik and Shri R.M. Patwardhan,
Advocates for Applicants.

Shri M.J. Khan, A.P.P for the Non-applicant – State.
Shri S.P. Bhandarkar and Shri P. Masurkar, Advocates for Informant/
Assisting prosecution.

CORAM : VINAY JOSHI, J.

Closed for Orders on : 06.09.2021
Order pronounced on : 15.09.2021

Registration of Crime No. 385/2021 with Gittikhadan Police Station, Nagpur for offence punishable under Sections 406, 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code, led applicants to seek pre-arrest protection in terms of Section 438 of the Code of Criminal Procedure.

2. Applicant - Rajshree Kamble has purchased a piece of land in the name of her daughter Anisha Kamble vide sale deed dated 23.05.2018. Her title was in dispute since said plot was already sold by the vendor to someone else. Applicant Rajshree prepared a layout over the adjacent government land and sold it to different plot holders. Applicant – Vasudeo Ingole was an agent working in the City Survey Office, who prepared a false and fabricated Non Agricultural Order (N.A.) with the aid of his associate, applicant – Kamlesh Samarth for mutating name of Anisha Kamble. Co-accused Shahnawaz Khan, who was a estate agent, was already arrested. Another co-accused who were partners of SRB Developers have been protected by this Court.

3. A land situated at Mouza Gorewada, bearing Khasara No. 103/4/C was initially owned by one Nilkanth Mendhe. In the year 1984 the original owner Nilkanth Mendhe sold said land ad-measuring 1 Hecter to one Nilima Shukla, whose name was also mutated to the revenue record. It is the prosecution case that applicants Rajshree and Anisha in connivance with the legal heirs of owner Nilkanth and co-accused Shahnawaz, got executed sale deed of the same land bearing Khasara No.103/4/C in the name of Anisha vide sale deed dated 23.05.2018. The said sale deed was executed

by Abdul Jalil in the capacity of power of attorney holder of legal heirs of Nilkanth. Rajshree and Anisha by conspiring with Wasudeo Ingole and Kamlesh Samarth got prepared false N.A. order pertaining to the said land. Moreover, by conspiracy with the city survey officials, got mutated their name to the city survey record. While mutating names, they have suppressed that the land was already sold by Nilkanth to one Nilima Shukla. They have deceitfully used old 7/12 extract of the land standing in the name of Nilkanth for effecting mutation. Thereafter Rajshree and Anisha prepared a layout plan on the adjoining land bearing Khasra No.106 belonging to forest department. They misled the city survey department and got carried measurements of the land Khasara No.106 by posing it to be their own land bearing Khasara No.103/4/C.

4. It is the prosecution case that applicants Rajshree and Anisha [purchasers] have assigned the job of sale of plots to SRB Builders and Developers, under Memorandum of Understanding. Through SRB Builders the plots were carved out on the forest land bearing Khasra No.106 and near about 30 plots were sold for appropriate consideration of Rs.5 Crores. Moreover, by use of a forged treasury challan an attempt has been made to carry out

measurement, since the earlier measurement was cancelled by the city survey, on realizing that erroneously survey was carried on forest land.

5. Precisely it was the grievance against applicants Rajshree and Anisha, that despite knowing that the land bearing Khasra No. 103/4/C was already sold to Nilima Shukla, they got executed a sale deed of the same land from legal heirs of owner through power of attorney holder Abdul Jalil. Not only that, they caused to prepare a forged and fabricated N.A. order of the said land by paying 9.30 lakhs to the agent Wasudeo Ingole. The said agent got prepared forged N.A. order by paying Rs.4 lakhs to another agent Kamlesh Samarth. On the basis of old 7/12 extract standing in the name of Nilkanth and by use of forged N.A. order, names were mutated. Moreover, a false layout was prepared on adjoining forest land bearing Khasra No.106, and sold plots to different purchasers for valuable consideration.

6. At the instance of report lodged by one of the plot purchaser namely Varsha Bhure, the aforesaid crime was registered with the non-applicant police station. Varsha Bhure as well as other plot purchasers were made to believe that Anisha was the owner of the Khasra No.103/4/C, out of which plots were sold. Moreover, by

deceitful means, the informant Bhure and other purchasers were made to believe that the layout prepared on the forest land bearing Khasra No.106, was on the land bearing Khasra No.103/4/C. The informant Bhure had purchased plot No.14 for a total consideration of Rs.13,31,952/-. Applicants Rajshree and her daughter Anisha by selling 33 plots, collected huge sale amount of Rs.5 Crores. The informant gave detail account of payment as to how she has paid total consideration of Rs.13,13,952/- in installments. At the time of purchase of the plot, Rajshree and her daughter shown the documents namely registered sale deed, forged N.A. order, layout plan prepared on forest land, Index – II extract and by misrepresentation caused informant to enter into the transaction. The informant stated that on realizing that the layout plan was prepared on land bearing Khasra No.106, Forest Department took possession of their land and erected fencing. After learning the things, the informant came to know that she was cheated and deceived, hence, the report.

7. At the inception, I may note some undisputed facts. Nilkanth Mendhe was the original owner of the land bearing Khasra No.103/4/C, ad-measuring 1 Hecter situated at Mouza Gorewada. In the year 1984, Nilkanth sold the entire land to one Nilima Shukla

and her name was mutated to the revenue record. Nilkanth, the original owner died in the year 1989. Power of attorney holder of legal heirs of original owner Nilkanth, executed sale deed of land Khasra No.103/4/C on 23.05.2018, in favour of Anisha. There is no dispute that on the strength of said sale deed, Rajshree and Anisha obtained N.A. order of said land through Ingole and got mutated their names in the revenue record. It is also not in dispute that layout plan was prepared on adjacent forest land bearing Khasra No.106, by posing it to be land bearing Khasra No.103/4/C. Moreover, there is no quarrel that Rajshree and Anisha through SRB Developers had sold near about 33 plots laid on Khasra No.106, by posing that the plots were on the land bearing Khasara No.103/4/C.

8. Heard the learned Counsel appearing for the respective applicants, learned A.P.P. representing State and learned Counsel appearing for the informant/assisting prosecution.

9. Applicants Rajshree and Anisha primely contended that they have bonafidely entered into the transaction of sale of land bearing Khasra No.103/4/C. They were totally unaware that the said land was already sold by the original owner Nilkanth to one Nilima Shukla. Co-accused Shahnawaz Khan, a estate agent has

misrepresented that the heirs of Nilkanth were desirous to sale said land. Believing on the statement of Shahnawaz Khan, they purchased the said land for total consideration of Rs.1.10 Crores. Legal heirs of original owner executed a power of attorney in favour of one Abdul Jalil, who in turn executed the document of sale dated 23.05.2018. Rajshree and Anisha would contend that they have paid entire consideration to the legal heirs of Nilkanth towards price of the land.

10. The another limb of their contention is that co-accused Shahnawaz [arrested] has introduced Wasudeo Ingole, an estate agent by saying that he would obtain necessary N.A. order and would mutate name in the city survey record. According to Rajshree and Anisha, believing on said statement, they bonafidely engaged Wasudeo Ingole for doing said work. They were totally unaware about forged N.A. order prepared by Wasudeo Ingole and his associate Samarth. Moreover, they would submit that during interim protection, they have handed over all the documents to the police, hence, their custodial interrogation is not necessary.

11. Likewise, it is submitted on behalf of Wasudeo Ingole and Kamlesh Samarth, that they were acting as agent in the City Survey office. They were ignorant about the fraud committed by

selling the land, which was already sold to Nilima Shukla. It is their contention that as routine work, they undertook the work of procuring N.A. order and mutating name of purchaser in to the City Survey record. By denying acceptance of huge money and claiming ignorance about fraud, they claimed pre-arrest protection. Moreover, it is submitted that already all the documents including forged N.A. order has been seized by the police, hence, their custodial interrogation is unwarranted.

12. The learned Counsel for Rajshree and Anisha, to show bonafides, has produced copies of applications filed by Rajshree prior to the lodgment of the first information report putting her grievance. In her first application dated 27.06.2020, she made grievance against the Forest Officers for taking possession of land. It was followed by a statutory notice issued to the Forest Department under Section 80 of the Code of Civil Procedure. Copy of application dated 12.07.2020 filed by Rajshree with police station Gittikhadan against Shahnawaz Khan is also produced. This time she pleaded grievance against Shahnawaz about causing her to purchase the land by misrepresentation. Similarly, application dated 12.08.2020, 18.09.2020 and application filed under Section 156[3] of the Code of Criminal Procedure, has been produced. Entire

endeavor was to impress that applicants Rajshree and Anisha were innocent. Infact they have been cheated by Shahnawaz in selling the property, which was already sold to some one else.

13. It is straneously argued that the existing first information report has been lodged on 11.06.2021, whilst all the grievance applications of Rajshree are prior, hence, they are innocent. At first blush, there appears to be substance, however, scanning of entire material speaks otherwise. Pertinent to note that when the Forest Department came to know that the layout plan was prepared on their land, they took possession of their own land and erected wire fencing. Perhaps the said act has interrupted activities of applicants of sale of plots by feigning it to be a layout on land bearing Khasra No.103/4/C. Applicants Rajshree and Anisha are not callow woman, their application dated 12.07.2020 made to police, bears reference that Rajshree was doing real estate business since the year 1995, meaning thereby they were well aware regarding the necessary requirements for purchase of a property. On the date of transaction, Rajshree had long experience of 20 years in real estate business. The transaction involved a crore of rupees. Hence, it is hard to accept that without verifying vendors title, they entered into the transaction. Moreover, record indicates that the

power of attorney holder Abdul Jalil was associate of Rajshree. Prima facie it is evident that Rajshree through her associate got executed sale deed in her daughter's name. Perused the statement of the husband of one of the legal heirs of original owner Nilkanth. He stated that since inception Shahnawaz and Rajshree in connivance with each other persuaded them to sell Khasra No.103/4/C and paid paltry amount. By misrepresentation Shahnawaz and Rajshree obtained signatures of all the legal heirs under pretext of mutating their names in to the revenue record. He also stated that without their knowledge, a power of attorney was got executed by Rajshree in the name of her associate Abdul Jalil. Not only that, that Rajshree and Anisha were present in the city survey office to facilitate mutation in their names to the revenue record. This statement speaks that since the year 2014, Rajshree took lead in the entire activity, therefore, prima facie it cannot be believed that she was totally unaware and cheated by Shahnawaz.

14. The matter can be looked from one another angle. Though sale deed dated 23.05.2018 executed by the power of attorney holder shows consideration of Rs.87 lakhs, however, majority of amount was shown to be paid in cash. Pertinent to note that most of the installments were paid long back in the year 2014,

which is not free from suspicion. Prima facie it is difficult to believe that without any agreement, such huge consideration was paid in cash tht too prior to three years from sale transaction. The learned A.PP. would submit that though some payment was shown by cheque, however, those cheques were never encashed by the vendor. Thus, apparently the entire transaction is fishy. One can easily sense that Rajshree was well aware that the legal heirs of Nilkanth were not the owners of the property, still she ventured into the transaction. Payment of sale consideration is also a matter of investigation.

15. It emerges that it was an agricultural land. Unless it is converted into non-agricultural, layout cannot be prepared. In order to remove said hurdle, so called owners Rajshree and Anisha have engaged Ingole to procure N.A. order of the said land. Rajshree paid huge amount of Rs.9.30 lakhs to agent Ingole, which speaks for itself. Prima facie it appears from the record that the applicant Rajshree was so proficient that on the basis of old 7/12 extract in the name of Nilkanth, and by use of forged N.A. order, she got mutated her name to the city survey record. Not only that, by joining hands with the officials of the City Survey, a false measurement was carried on the adjoining land owned by forest

department, by misrepresenting it to be land bearing Khasra No.103/4/C. It is also revealed from record that Ingole was present at the time of so called measurements, meaning thereby he was aware about all the fraudulent activities.

16. The statement of the official of City Survey Department states that they got measured the land which was shown by Rajshree. The entire work of carrying measurements on another land at the behest of applicant Rajshree itself is suspicious, and puts a question mark on the functioning of the office of the City Survey. It is difficult to comprehend as to how the city survey officers have carried measurements on government land without verifying the location from their original record. They cannot measure the land at the whims of owners, but, it is their primary duty to ascertain the land from the official record. Rather it was the main purpose of carrying measurement to locate the land, which itself got frustrated due to total negligence of the Authority. The role of concerned City Survey Officers who carried measurement, is not free from suspicion which requires through investigation. It reveals from the statement that later on the city survey office has canceled the said measurement, since they carried measurement on the land of forest department at the behest of Rajshree.

17. One more fraud was surfaced. Applicant's land was tried to be remeasured on the basis of forged treasury challan regarding payment of measurement fees. When forged treasury challan was produced, the Authority suspected and the fraud was disclosed. Suffice to say that falsity, misrepresentation and fraud is abundant.

18. Applicants have submitted that there is no need of custodial interrogation, as already documents were seized and they have cooperated with the investigating agency. In response, it is submitted that the forged treasury challan is yet to be seized. Besides that necessity of custodial interrogation from various angles has been pressed into service. It reveals that Rajshree and her daughter were the preparator of entire episode. The power of attorney holder Abdul Jalil happened to be of her long standing associate. Not only the informant, but, 33 innocent plot purchasers were cheated, and government department was also deceived. The investigation is needed on various areas, to see whether the sale transaction was bonafide, whether consideration was paid, applicants link with the government department and so on. It is to be investigated as to who from the City Survey Officer has mutated names on the basis of old 7/12 extract in total disregard to the

procedure. It requires investigation as to how without perusing the original sanad and city survey record, measurement was carried on the government land. The investigation is also necessary to find out as to how N.A. order was forged. The investigating officer states that there is need of custodial interrogation of Ingole and Samarth, who prepared forged N.A. order with the help of officials of government department. Moreover, investigation is also required to find out as to how the treasury challan was forged.

19. There is no substance in the contention of Rajshree that everything was done by Shahnawaz. She cannot scuttle from the liability by pointing towards the dark history of Shahnawaz, who is behind bars. The applicant Rajshree was well experienced estate dealer. Not only she entered into fictitious transaction, but, created a mess by deceiving several innocent plot purchasers. Likewise, applicants Ingole and Samarth cannot claim innocence by blaming Rajshree and Shahnawaz. It is their stand that they were not aware about the title documents, but, since the work of obtaining N.A. order and mutation was entrusted to them, they did the same. Huge amount has been parted for preparing forged N.A. order. Both Ingole and Samarth are agents, working in the City Survey Office. Their mode and manner of preparing forged N.A. orders, as well as

use forged challan requires thorough investigation to unearth the truth. The consequence of their act is so disastrous that 33 plot holders were cheated for their hard earned money. Prima facie it appears that all accused have shared the booty collected from the fraudulent act. Applicants have caused to believe that they were going to sell the plots from Khasra No.103/4/C, but, actually plots were earmarked by creating a false layout on the government land bearing Khasra No.106. Having regard to the vast magnitude, the matter requires thorough investigation. In such type of cases, which can be termed as land grabbing, the Courts will not afford to use its judicial discretion. In view of that, all bail application deserves to be rejected, and accordingly the same are rejected.

20. At this juncture, the learned Counsel appearing for applicants made a request to extend the interim protection, so as to enable them to approach the Hon'ble Supreme Court in the matter. The interim protection exists till date. Having regard to the said fact, interim protection to continue for a period of two weeks from today. Needless to mention that the same shall cease to operate automatically after expiry of the said period.

JUDGE

Rqd.