

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**ANTICIPATORY BAIL APPLICATION NO.10 OF 2022
WITH
CRIMINAL APPLICATION NO.208 OF 2022**

Ashok S/o Mohan Turkunde

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr.R.N. Dhorde, Senior Advocate i/by Mr. V.R. Dhorde
Advocate for Applicant in Anticipatory Bail Application
No.10 of 2022

Mr.A.M. Phule , A.P.P. for Respondent-State.

Mr.Shivaji T. Shelke Advocate for informant in Criminal
Application No.208 of 2022 for assist to APP.

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 19th JANUARY 2022

DATE OF PRONOUNCING ORDER : 12th APRIL 2022

ORDER :

1. Criminal Application No.208 of 2022 moved for assist to APP stands allowed and disposed of.

2. Applicant is apprehending his arrest in connection with Crime No.632 of 2021 registered with Karjat Police Station, District-Ahmednagar for the offence punishable under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code.

3. Heard learned Advocate Mr. R.N. Dhorde instructed by learned Advocate Mr.V.R. Dhorde for the applicant and learned APP Mr. Phule for the respondent – State well assisted by learned Advocate Mr. Shelke for the informant.

4. It has been vehemently submitted by learned Senior Counsel appearing for the applicant that the applicant has been falsely implicated. Applicant is a *bona fide* purchaser of the land in question from one Harshal Ashok Patil. Name of said Harshal Patil was entered into and appearing in the revenue record and therefore, the applicant believed that he is the true owner. After raising the necessary amount of Rs.11,35,000/- and also the amount of stamp duty, applicant purchased the said land for valuable consideration by getting a registered sale deed executed in his favour on 7th September 2021. Major portion of the said amount, i.e. Rs.10,00,000/-, is paid by RTGS. If the applicant had any intention to cheat the informant, then there

could not have been such transaction. On the date of the sale deed, the applicant was put in possession of the said land by the vendor and since then he is cultivating the same. His name is also entered in the 7 X 12 record vide Mutation Entry No.1377 which has been produced on record. When the informant started obstructing the applicant, he has immediately filed R.C.S. No.192 of 2021 against the informant and an application for interim injunction was also filed. Notices were issued by the learned Civil Judge Senior Division, Karjat which were to be made returnable on 12th November 2021, by order dated 6th October 2021. When the informant came to know about the institution of the suit, he has lodged the false First Information Report (for short "FIR") on 8th October 2021. The custodial interrogation of the applicant is not required as he has neither cheated the informant nor has got any document forged. The applicant is ready to abide by the terms of the bail. In view of the interim order passed by this Court, the applicant was attending the Police Station and has cooperated the investigation.

5. Per contra, the learned APP well assisted by learned Advocate Mr. Shelke for the informant, who has filed separate application for assist to APP, vehemently submitted that the

informant is the person who had purchased the suit property on 23rd February 1968, however some dispute was pending under the Tenancy Act. Informant is the owner of the suit land. The land was actually belonging to one Nana Kanhu Bhosale and Maruti Vithoba Gaikwad. It was divided equally between them and mutation entry was entered into on 30th May 1958 to that effect. Thereafter, Nana Kanhu Bhosale expired somewhere around 1960 and then inquiry was made in respect of his heirs. Nana was survived by only daughter, namely Vijayanta Babu Gaikwad and the informant has purchased the land from her. Harshal Ashok Patil has got a forged will executed in his favour on 3rd July 2020 stating that Nana Kanhu Bhosale has bequeathed the said land to him. A fake voters card and will was prepared and then the mutation entry has been got done. He has, therefore, sold the said land by way of forged document of sale deed to the applicant. Said Harshal Patil as well as Ashok Mohan Turkunde i.e. present applicant had caused someone to impersonate as Nana Bhosale and got the said document of sale deed executed. The physical custody of the applicant is required to know as to how the said forgery has been done and who was actually involved in the crime.

6. The contents of the FIR are already narrated and therefore the same are not reproduced here. The applicant, after the affidavit was filed by the informant along with the documents, has again filed the counter affidavit and stated that he had gathered information that Nana Kanhu Bhosale was not at all married and he was not having wife or children. On the strength of bogus sale deed of 1968, the informant was never in possession of the said land. On inquiry, it has been revealed that Vaijayanta Babu Gaikwad is the daughter of Parwati Laxman Talekar and was married to Babu Genu Gaikwad. Babu Gaikwad died on 22nd March 1948. Even Vaijayanta died on 30th November 1997. Parwati Talekar died on 11th April 1987. When the alleged vendor of the informant had no right, title or interest over the suit land, she could not have sold and given better title to the informant. He has also produced on record certain documents to support his contention.

7. As aforesaid, there appears to be the civil dispute pending between the parties and also the fact that question has been raised as to who was the real owner of the suit land and whether informant or the applicant could have received title from their vendor. This Court being a Criminal Court, cannot go into the aspect as to whether the applicant was bona fide purchaser for

value, but the fact remains is that on the date of sale deed the name of the vendor of the applicant, namely, Harshal Patil is appearing on 7 X 12 extract. It can also be seen from the document of sale deed that the applicant has paid major portion of consideration i.e. amount of Rs.10,00,000/- through RTGS to co-accused Harshal Patil. Therefore, definitely substance is there in the submissions on behalf of the applicant that if the applicant had the intention to cheat then whether he could have transferred so much of amount through RTGS.

8. Another fact to be noted is that for attracting provisions of Section 420 of the Indian Penal Code, there has to be some kind of representation to the informant and such representation that is contemplated, is the personal i.e. one to one representation and not through any other mode. Even the informant has not stated that at any earlier point of time the applicant had met the informant and told about the proposal. There is also dispute as to when Nana Kanhu Bosale has expired and therefore, it will have to be left to be decided at the time of final hearing. There is room to believe that there would have been impression on the applicant that Harshal Patil was the owner of the said land. All the formalities can be said to be arrived at and executed by the signatories to the registered sale deed. It can also be seen from

the action on the part of the applicant that when the informant had obstructed him, he has lodged the civil suit with Karjat Court without any delay. We are also required to take into consideration the dates. The civil suit was filed on 5th October 2021 and order of issuing notice was passed by the concerned Court on 6th October 2021. The FIR has been lodged on 8th October 2021. Even if for the sake of arguments it is accepted that will, that is alleged to have been executed by Nana Bhsale in favour of Harshal Patil, and death certificate of Nana are forged, it is to be noted that the applicant cannot be said to be the direct beneficiary of such acts and therefore, physical custody of the applicant is not required for the purpose of investigation.

9. When the facts of the case show that the physical custody of the applicant is not required and the applicant is having permanent place of abode as well as immovable property, then he deserves protection under Section 438 of the Code of Criminal Procedure. The interim protection granted by this Court on 6th January 2022, deserves to be confirmed. Accordingly, following order is passed:-

ORDER

- i) Application stands allowed.
- ii) The interim protection granted to the applicant by this Court by order dated 6th January 2022 stands confirmed. It is thus clarified that in the event of arrest of the applicant – Ashok S/o Mohan Turkunde in connection with Crime No.632 of 2021 registered with Karjat Police Station, District-Ahmednagar for the offence punishable under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code, he be released on bail on PR Bond of Rs.30,000/- (Rupees Thirty Thousand) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand) each, if already not released.
- iii) Applicant shall remain present before the Investigating Officer as and when called and co-operate with the investigation.
- iv) Applicant shall not tamper with the evidence of the prosecution in any manner.
- v) Criminal Application No.208 of 2022 stands disposed of.

[SMT. VIBHA KANKANWADI , J.]