

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

**ANTICIPATORY BAIL APPLICATION NO.86 OF 2022
WITH
CRIMINAL APPLICATION NO.569 OF 2022**

Babasaheb S/o Gokul Kangude

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Rahul R. Karpe Advocate for Applicant in Anticipatory
Bail Application No.86 of 2022
Mr.A.M. Phule, A.P.P. for Respondent-State.
Mr.Shivaji T. Shelke Advocate for applicant in Criminal
Application No.569 of 2022 for assist to APP.

...

WITH

ANTICIPATORY BAIL APPLICATION NO.87 OF 2022

Mahadev S/o Tukaram Dhage

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Rahul R. Karpe Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent-State.

...

WITH

ANTICIPATORY BAIL APPLICATION NO.72 OF 2022

Balasaheb S/o Manik Modhale

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Rahul R. Karpe Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 15th FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 12th APRIL 2022

ORDER :

1. Criminal Application No.569 of 2022 moved for assist to APP stands allowed and disposed of.

2. Applicants in all these Applications are apprehending their 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. Karpe for the applicants 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 on behalf of the applicants that they have been falsely implicated. One Ashok Turkunde had purchased the land in question from one Harshal Ashok Patil. Applicant – Babasaheb Gokul Kangude (Applicant in ABA No.86 of 2022) is the relative of Ashok Turkunde and has signed the said transaction only to the extent of identifying him. Applicant – Mahadev Tukaram Dhage (Applicant in ABA No.87 of 2022) is the Talathi and he had taken the Mutation Entry No.1330 in respect of the will and also on the basis of death certificate produced by Harshal Patil and also by issuing notices to the persons mentioned therein, had taken the entry on the basis of order passed by Circle Officer. He, on his own, has not done any act. It is also submitted on behalf of the applicant – Mahadev Tukaram Dhage that in view of the decision of this Court in **Venkat Limbaji Koli vs. State of Maharashtra** (Criminal Application No.4924 of 2010, decided on 13th April 2011) and other similar pronouncements, it has been held that

the Talathi would be the deemed Civil Court within the meaning of Section 237 of the Maharashtra Land Revenue Code and he is a Judge within the meaning of Section 2(a) of the Judges (Protection) Act and therefore, he is not liable to be prosecuted.

5. Learned counsel for the applicants further submitted that applicant – Balasaheb Manik Modhale (Applicant in Anticipatory Bail Application No.72 of 2022) is also the relative of purchaser Ashok Turkunde and he being the *bona fide* purchaser, had requested the applicant – Balasaheb Modhale to sign the sale deed to the extent of identifying and accordingly, he has identified. There is no question of commission of any offence by the witnesses as they have not gained anything. It has also been submitted that what information was gathered by the witnesses to the document from co-accused Ashok Turkunde that he had paid substantial amount of consideration i.e. amount of Rs.10,00,000/- by way of R.T.G.S. to said Harshal Patil. Therefore, there was no intention to cheat otherwise there could not have been transfer of such huge amount by legal mode. It has been further submitted that on the date of the sale deed, the co-accused Ashok Turkunde 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. When the informant started obstructing the co-accused Ashok, he has immediately filed R.C.S. No.192 of 2021 against the informant and an application for interim injunction was also filed. By order dated 6th October 2021, notices were issued by the learned Civil Judge Senior Division, Karjat which were to be made returnable on 12th November 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 applicants is not required as they have neither cheated the informant nor has got any document forged. The applicants are ready to abide by the terms of the bail. In view of the interim order passed by this Court, the applicants were attending the Police Station and have cooperated with 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 co-accused Ashok. Said Harshal Patil as well as co-accused Ashok Mohan Turkunde had caused someone to impersonate as Nana Bhosale and got the said document of sale deed executed. Since the two witnesses who are applicants in ABA No.86 of 2022 and 72 of 2022 are the relatives of co-accused Ashok, there is every room to say that they would have had common intention to forge the documents and cheat the original owner. Further the applicant in ABA No.87 of 2022, who is Talathi, ought to have taken basic precautions before taking entry in the mutation register on the basis of said forged will.

The physical custody of the applicants 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. We are required to consider here the role allegedly played by the present applicants. At the cost of repetition, it can be said that two of them are the witnesses for identification of the purchaser and another is Talathi, before whom an application along with the documents was submitted for taking entry in the mutation register.

7. As regards the witnesses are concerned, how they can be said to have common intention with the main co-accused for preparation of forged documents, is a question. Unless they had the information or they had seen certain past documents and this fact was within the knowledge of the informant, then only the allegations about taking part in forging the documents against them would survive. There is nothing on record to show that the applicants were knowing Harshal Patil prior to the said transaction / registration of the sale deed. No doubt, they themselves have declared that they are the relatives of co-

accused Ashok Turkunde, but that does not mean that, even for the sake of arguments it is accepted that Ashok had taken active part, then he would have disclosed the design to commit any offence to the present applicants, who are the witnesses.

8. 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 co-accused Ashok could have received title from their vendor. This Court being a Criminal Court, cannot go into the aspect as to whether co-accused Ashok 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 co-accused Ashok, namely, Harshal Patil was appearing on 7 X 12 extract. It can also be seen from the document of sale deed that the co-accused Ashok 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 applicants that if the co-accused Ashok had the intention to cheat then whether he could have transferred so much of amount through RTGS.

9. Even as regards Section 420 of the Indian Penal Code is concerned, it can be seen that there was no direct connection or dialogues between the witnesses to the document i.e. applicants before this Court and the original informant. Therefore, at this stage, it can be said that the ingredients of Section 420 of the Indian Penal Code are not attracted against those two applicants.

10. Now, turning towards the applicant – Talathi – Mahadev Tukaram Dhage, we need not go into the aspect as to whether he is protected under the Judges (Protection) Act or not, because it is a defence taken by him which he will have to prove. Even if powers of Civil Courts are given to an authority, yet it cannot be stated in certain circumstances that the said authority would be a “Judge” in view of the definition under Section 2(a) of the Judges (Protection) Act. The act that has been done by the present applicant – Talathi – Dhage is that the application along with the documents was presented to him, he has seen that the document which was produced was the registered will alleged to be executed by deceased Nana Kanhu Bhosale in favour of accused Harshal Ashok Patil and therefore, in view of the said document he has taken the mutation in the name of Harshal Ashok Patil. At this stage, it can be said that the registered

documents are having presumptive value and therefore, when such registered instrument is produced, the authority would bona fide believe that it is a genuine document. Further actions which have been taken by applicant - Mahadev Dhage are in his official capacity as Talathi. Merely, on the basis of such entry being taken and thereafter Khata extract has been taken, it will not amount to fabrication of any document. Prima facie the ingredients of the offence are not attracted and therefore all the applicants deserve to be protected under Section 438 of the Code of Criminal Procedure. This Court had already granted interim protection to the applicants, which deserve to be confirmed. Accordingly, following order is passed:-

ORDER

- i) All the Applications stand allowed.
- ii) The interim protection granted to the applicant in Anticipatory Bail Application No.86 of 2022 by this Court by order dated 24th January 2022 stands confirmed. It is thus clarified that in the event of arrest of the applicant – Babasaheb S/o Gokul Kangude, 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) The interim protection granted to the applicant in Anticipatory Bail Application No.87 of 2022 by this Court by order dated 6th January 2022 stands confirmed. It is thus clarified that in the event of arrest of the applicant – Mahadev S/o Tukaram Dhage 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.

iv) The interim protection granted to the applicant in Anticipatory Bail Application No.72 of 2022 by this Court by order dated 6th January 2022 stands confirmed. It is thus clarified that in the event of arrest of the applicant – Balasaheb S/o Manik Modhale 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.

- v) Applicants shall remain present before the Investigating Officer as and when called and co-operate with the investigation.
- vi) Applicants shall not tamper with the evidence of the prosecution in any manner.
- v) Criminal Application No.569 of 2022 stands disposed of.

[SMT. VIBHA KANKANWADI , J.]

asb/APR22