

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.403 OF 2022

MAHESH KUMAR PURANPAL PARPYANI
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. R. F. Totla h/f Mr. Swapnil Lohiya, Advocate for applicant.
Mr. B. V. Virdhe, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 06.04.2022

ORDER :-

. The applicant is apprehending his arrest in connection with Crime No.403 of 2019 registered with Satara Police Station, Dist. Aurangabad for the offences punishable under Sections 420, 406, 467, 468, 471 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. R. F. Totla holding for learned Advocate Mr. Swapnil Lohiya for the applicant. Learned APP submitted that he is not armed with police papers as the matter is coming for the first time. However, the offence alleged against the applicant is serious and, therefore, the applicant does not deserve any sympathy.

3. Learned Advocate for the applicant submits that the applicant has not committed any offence. He is, in fact, a *bona fide* purchaser of the

disputed land as it was represented by the vendor that the revenue record of the land bears his name and the 7/12 extract shows that it is class-I land. The applicant has paid the consideration as per the market value. The applicant was not supposed to know whether the land was allotted by the Government to the predecessor on any condition. Even otherwise, there is a clause of cancellation of allotment and taking back the possession. The applicant is making statement that he will not claim any title to the property and would initiate the action of giving back the land to the Government. Custody of the applicant is not required for the purpose of investigation as the investigation is depending on the documents which are already in possession of the investigating agency. There is inordinate delay of 4 years and 6 months in lodging report. The benefit of all these things be given to the applicant. The applicant fairly submits that he had approached the learned Additional Sessions Judge by filing Bail Petition No.367 of 2020 and it came to be rejected on 19.03.2020. Thereafter, as per the advice given, he has again approached the same Court by filing Bail Application No.388 of 2022. In fact, he could have come to this Court immediately after the rejection of the first bail application. Now, his second bail application has been rejected on 08.03.2022. The applicant is ready to abide by the terms of the bail. All the necessary documents have been placed on record.

4. At the outset, it is to be noted that the FIR is lodged by Shivaji Sambhaji Shelke, serving as Assistant Commissioner with Social Welfare at Aurangabad. He has stated that under the different schemes of Department of Social and Justice of the State Government, lands are allotted for cultivation to the landless or marginal landholders, members of Scheduled Tribe and Scheduled Caste or even the persons under poverty. In the said scheme, 0.70 R land from Ghardon Tanda, Taluka and District Aurangabad was given to Bhausahab Barku Aavcharmal and 0.71 R land was given to Kachru Kerba Shinde on 21.01.2006 by the specific order passed by the Collector, Aurangabad. Conditions were imposed that it cannot be disposed of by donation, gift, mortgage, sell or rent. The condition was put that they should personally cultivate the same and if they fails to cultivate, then the land will be taken back. The land which was given to them was from Class-II non transferable. From 2006-2014, the beneficiary had cultivated the land, however, thereafter on 01.02.2019, the complaint was made that those two persons have sold the land and, therefore, inquiry was initiated. It was found that those two persons had sold both the pieces of land on 11.06.2014 to the present applicant by registered sale-deed and, therefore, offence was filed stating that the Government has been cheated and the amount has been misappropriated in furtherance of their common intention.

5. The applicant intends to set up defence of *bona fide* purchaser for value without notice. However, it appears that he has not made any inquiry as to how the land devolved on his vendors. Merely by saying that in the 7/12 extract it was mentioned as Class-I, it is not sufficient. 7/12 extract is not a document of title. There was no hurdle for the applicant to ask his vendors to show him the documents of title. If the proper precautions have not been made and taken, then the applicant cannot say that he is *bona fide* purchaser for value without notice. Furthermore, these are the *prima facie* observations. He will have to produce the said defence at the time of trial. Till then, there appears to be evidence against the present applicant to show that though he could have had got the knowledge about the restrictions on the transfer of the land, yet he proceeded to purchase it and, therefore, there appears to be intention to cheat the Government, who is the real owner of the property.

6. Another fact to be noted is that the first bail application of the applicant was rejected on 19.03.2020, however, he neither surrendered before the Police Officer, nor he came before this Court. Therefore, there is room to believe that he is absconding. When he filed the second bail application, it was the stand taken by the investigating agency that when police tried to search him, he was not found. Even the disputed sale-deeds were produced by son of the applicant before the police and those

have been seized. Thus, though the sale-deeds have been seized, yet the applicant is avoiding arrest. No doubt, there is no evidence before this Court at this stage that the procedure under Sections 82 and 83 of the Code of Criminal Procedure was initiated, but when the police were trying to arrest the applicant and the applicant was not found, that is also sufficient to infer that the applicant is avoiding arrest. Reliance can be placed on the decision in *Prem Shankar Prasad Vs. State of Bihar and Anr.* [AIR 2021 SC 5125], wherein it was held that when the proceedings under Sections 82 and 83 were initiated, then such absconder/proclaimed offender is not entitled for the relief of anticipatory bail. Reliance was then placed on the decisions in *State of Madhya Pradesh Vs. Pradeep Sharma*, [(2014) 2 SCC 171] and *Lavesh Vs. State (NCT of Delhi)* [(2012) 8 SCC 730], wherein similar observations are made. Though, in this case, as aforesaid the evidence is not adduced to show that police have undertaken steps under Sections 82 and 83 of the Code of Criminal Procedure, yet when the inference can be drawn that the applicant is absconding, he does not deserve extraordinary and discretionary relief under Section 438 of the Code of Criminal Procedure. Therefore, the application stands rejected at the threshold.

scm

[SMT. VIBHA KANKANWADI, J.]