IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 ANTICIPATORY BAIL APPLICATION NO.1226 OF 2022

DEVIDAS TRIMBAK DHEPALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH

ANTICIPATORY BAIL APPLICATION NO.914 OF 2022

MAHEMOOD HAMID SHAH AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

WITH

CRIMINAL APPLICATION NO.2932 OF 2022
IN ABA/914/2022

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Advocate for Applicant in ABA/1226/22 : Mr. Swapnil S. Patunkar h/f J. P. Legal Associates.
Advocate for Applicant in ABA/914/22 : Mr. Chavan R. N.
Advocate for Applicant in Cri. Appln/2932/22 : Mr. Sushil Biyani h/f Mr. R. A. Jaiswal.
APP for Respondent/s-State : Ms. V. S. Choudhari.
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CORAM : S. G. MEHARE, J.
DATE : 04.10.2022

PER COURT :-

1. In Anticipatory Bail Application No.914 of 2022, applicant No.1 is the witness to the document and applicants Nos.2, 3 and 4 have the case of bona fide purchaser. The

applicant in Anticipatory Bail Application No.1226 of 2022 is Gram Sevak.

2. The prosecution has a case that the grandparents of the complainant owned the plots situated at village Bidkin. All the applicants have forged the number of sale deeds by impersonation. In the same way, they have sold around 200 plots. The applicant Sherkhan is the mastermind in all these acts. He knew well that the sellers of the plots were not the property owners. He was first selling the plots in the name of some other person and creating a title document, then transferring the plots illegally by the notarized documents. In the present case he also adopted the same modus operandi and transferred the plot in question in the name of his wife, Maimunna, by a gift deed (Hibanama).

3. Learned counsel appearing for the applicants in Anticipatory Bail Application No.914 of 2022 has vehemently argued that the report has been delayed by 27 years. Applicant Sherkhan purchased the property in the year 2014. However, the alleged forgery was committed in the year 1994-1995. Referring to a mutation taken in the year 2015-2016 in the name of the applicant, he has vehemently argued that the complainant knew in 2016 that property owned by his

forefathers had illegally mutated. Once again, since 2016, he did not lodge any report against the applicants. Referring to the documents, he further argued that the applicants had verified the mutation entries before purchasing the property. It was the entry in the name of the original culprit in form 8. Therefore, they believed in the seller and purchased the plots in question. Applicant Sherkhan was the bona fide purchaser of the plot in question. It is purely a civil dispute. Unless the forgery has been proved, the applicants cannot be blamed for having forged the documents and illegally sold the property that did not belong to them. Repeatedly, he has argued that the documents relevant to the case are lying with the Investigating Officer and in the office of Village Panchayat. Therefore, the custodial interrogation of the applicants is not essential. He also argued that applicant No.2 Maimunna is a lady and recently delivered a child. She has no role to play. Therefore, she may be given special consideration. Applicant Sherkhan had purchased the property plots by notary documents and then sold them to one Saiyyad Rais in 2016. The allegations did not constitute forgery against the applicants. He relied on the case of ***Arvind Sood Vs. State of U.P. and another***, Criminal Misc. Anticipatory Bail Application under Section 438 of Cr.P.C. No.10477 of 2021 dated 14.06.2021. Relying on this case law, he has vehemently argued that the facts of that case were similar to the case at hand. The Allahabad High Court has taken the view that the report lodged belatedly may be considered for bail. Considering the facts, anticipatory bail was allowed. It has also been argued that the FIR is for four plots only. Therefore, the complainant has no voice to place the document on record related to the other transactions. He prayed to allow the application.

4. Learned counsel appearing for the applicant in Anticipatory Bail Application No.1226 of 2022 has vehemently argued that the applicant has barely taken the entries in form No.8 as a part of his duty. Form No.8 is prepared for the purpose of tax and is not a document of title. The plots were *Gunthewari*. The applicant corrected the entries on the complaints of the complainant. Unless the Civil Court records the findings of forgery, no criminal action can be taken against him. It would be difficult to believe that the applicant has played a role in the present crime. There were a lot of transactions. All the documents were available with the office of Village Panchayat. Nothing is to be recovered from him. Hence, he may be granted anticipatory bail.

5. Learned APP has vehemently argued that applicant No.1 Mahmood Hamid Shah is a witness to the many sale transactions. None of his signatures was similar. Further learned APP has vehemently argued that all these applicants had a modus operandi to create a document in the name of the fake person showing them as the owner of the plots. Then, it is sold to a third party, as happened in this case, and transfer the said property in the name of their family members. She has referred to several documents and argued that the persons named as the property sellers are not in existence in many cases. Their Aadhar Cards and photographs also appeared fake and false. On the basis of the Aadhar card attached to the sale transaction, the Investigating Officer inquired, but he did not find the persons named in the sale deed. She has vehemently argued that many transactions have been done on the same document, No.2442 of 1995. She has referred to all these documents and pointed out how the fraud has been played. She has pointed out the number of similar sale transactions which have been registered on the same document number. She has also referred to a letter by Sub Registrar, and he has categorically informed the Investigating Officer that the documents showing the registration numbers were never registered in his office, and in the relevant years, the office did

not have the said document serial numbers. She further argued that all transfers had been done on notarized documents, which were illegal and not valid sale transactions in the eye of the law. In all cases, the sellers have paid the consideration of lakhs of rupees in cash.

6. As per the case of Gram Sevak in application No.1226 of 2022 is concerned, learned APP has vehemently argued that he took the entries in Form No.8 in collusion with the applicants, Sarpanch and Up Sarpanch of the Village Panchayat. When he learnt that he did not take the entry in the name of Kesarbai first, he corrected the entry subsequently and forged the public record. Applicant/Gram Sevak did not hand over the charge and documents, took the entire document with him and forged the record regarding entries in the Gram Panchayat record. All the applicants knew well that the original landlord resided in Malegaon. It is the modus operandi of applicant Sherkhan and others to search such types of properties which are unattended by the landlords and create a false document in the name of the fake person and make huge money in collusion with the Village Panchayat members and officers. The offence is serious. Around 200 plots, by applying the same modus operandi, have been sold.

7. Learned counsel appearing for the complainant has filed a bunch of documents and argued that the applicants had filed all these documents before the Sessions Court. However, those documents were not placed before this Court while seeking interim protection. All these documents reflect that the document at serial No.2442 of 1995 has been used for money transactions. He has also referred to certain original transactions in which a seller and owner are altogether different persons. Applicant No.1, namely Mahmood Hamid Shah, is the relative of other co-accused. He seems to be a professional /paid witness. He was the witness every time in all the documents created by the other co-accused. Hence, it can be inferred that he was also a conspiracy member. He has also argued that he has put his signature on every document in different letters. Sometimes, he signed the document in English and sometimes in Marathi, but those two signatures were also not similar. He was not consistent in his signatures. His conduct as such is self-evidence of his criminal mind. He also repeated the arguments advanced by the learned APP about the modus operandi of committing the crime. He added that many plots had been purchased by the Village Panchayat members, Sarpanch and Up-Sarpanch of the Village Panchayat.

Wherever in the Village Panchayat meeting, the resolutions regarding the property in question were passed regarding the property in question to be mutated, every Panchayat member used to remain present, and they were unanimously passing the resolution. He has made a bold statement that all those Village Panchayat members were the beneficiaries. They were knowingly taking the entries in form No.8. He has also vehemently argued that when the applicants approached Village Panchayat Office, he did not supply the copies/documents to the applicant. However, Gram Sevak produced the document pretending that he received the documents from Village Panchayat, but he had only a single page which was the document of Village Panchayat. He created the remaining document posing that it is the Village Panchayat record. The applicants have obtained interim protection from this Court suppressing the material facts and not placing the documents before the Court, which they have filed before the learned Additional Sessions Judge. This is a big scam. Many more persons have been involved in this crime. Therefore, the applications may be dismissed.

8. The above discussion reveals that the applicant Mahmood Hamid Shah was a regular witness to many

documents. Considering the number of documents to which he is a witness, there is ground to draw an inference; he was a professional witness. Besides this, he is the relative of another co-accused in Bail Application No.914 of 2022. The Investigating Officer tried to find the persons who had allegedly sold the property, but he could not find them at the given address. That gives rise to further investigating the forged Aadhar Card and other identity cards.

9. Learned APP and learned counsel appearing for the complainant have correctly argued on the modus operandi of the case in creating the document. The bunch of documents is apparently against all the applicants. It is surprising to know that many documents were registered on the same document number. The possibility of using the same first page for creating multiple documents by the culprits can not be ruled out. Learned counsel for the complainant has rightly pointed out that in a subsequent document, only the plot numbers and description had been changed, and other contents were kept as it is. The letter issued by the Sub Registrar dated 29.08.2022 revel that the last registration number of the document of his office for the relevant year was 2849 of 1995. However, the applicants have created the document under documents

No.4442 of 1995 and 4486 of 1995. The Sub Registrar has categorically informed the Investigating Officer that the documents at serial No.4442 of 1995 and 4486 of 1995 were not registered with his office. Since the applicants possess the documents, it is one more strong circumstance against them.

10. As far as the Gram Sevak is concerned, it has been argued that these plots were not converted to non-agricultural use. This goes to show that he had the knowledge that the plots were not authorizedly converted to non-agricultural. So it was his duty to raise the objection that such sale transactions are illegal. Secondly, being a Public Officer must not have to take the entries in form No.8 on the basis of notarized documents in which immovable property of more than Rs.100/- were transferred. He also has the argument that since the Village Panchayat had passed the resolution, he was bound to follow it. Again, he failed to discharge his duties being a public servant. If the Village Panchayat passes any resolution against the law, his duty is to refer the resolution to a Chief Executive Officer or Collector for cancellation. But he kept silent. The serious allegations levelled against him that he did not hand over his charge and the documents in his custody. The arguments of learned counsel for Gram Sevak that all

documents were available with the Village Panchayat do not inspire confidence.

11. The applicants seem very courageous to sell the plots, not a few, but around 200. The applicants have a specific modus operandi to transfer the property. A huge amount appears to have been involved in this case. Apparently, the applicants have forged the documents in collusion. Considering the gravity and seriousness of the crime, no special consideration as prayed for applicant Maimunna, who delivered a child 3 to 4 months back, can not be given to her. Taking the documents and allegations into consideration, this Court is of the view that both applications deserve to be dismissed. Hence the following order:-

O R D E R

(i) Both Anticipatory Bail Applications stand dismissed.

(ii) Criminal Application No.2932 of 2022 to assist learned APP is allowed.

(iii) The prayer to extend the interim protection for four weeks is declined for the reasons that at the time of obtaining interim protection, the applicants did not produce the documents before the learned

Additional Sessions Judge, and the offence is serious.

(S. G. MEHARE, J.)

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vmk/-