

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

**ANTICIPATORY BAIL APPLICATION NO.989 OF 2022
WITH APPLN/2632/2022**

1. Kishorkumar Mohanlal Bafna

2. Paresh Kiran Bafna ...Applicants

VERSUS

The State of Maharashtra ...Respondent

...

Mr. Amit S. Savale, Advocate for the applicants.

Ms. V.S. Choudhari, APP for the respondent-State.

Mr. S.P. Brahme, Advocate for Assist to PP

...

CORAM : S.G. MEHARE, J.

DATED : 22nd AUGUST, 2022

PER COURT:-

1. Heard learned counsel for the applicants, learned APP for the State and learned counsel Shri S.P. Brahme for the complainant at length.

2. The case has a checkered history of disputes that arose out of the incorrect city survey number. It is not in dispute that the trust has sold the survey no.483/A-1 to the predecessor of the applicant. The applicant no.1 has purchased the said land and subsequently sold it to a third party. However, serious allegations have been made against the applicant that he misrepresented the revenue authorities and claimed the mutation of city survey no.6800 which was not belonging to him. Fortunately, hearing the parties at

length, learned counsel appearing for the trust conceded that whatever the land the applicant has sold to a third party, was not the part and parcel of the city survey no.6800.

3. Learned counsel for the applicants has vehemently argued that he has committed no offence but it was the mistake committed by the land survey officer intimating the applicant a false city survey number. He was under the impression that his survey number has been given city survey no.6800. He has referred to the maps attached to the various sale deeds. The description in the said map is not denied by the complainant. Whatever the property was sold by the trustee to the predecessor of the applicant, it was the same land. But, the learned counsel for the complainant has serious objection that the applicant had played a mischief with the office of the public trust. He has defrauded the city survey officer and made false statement before the Hon'ble Division Bench in the writ petitions which was filed by the present applicant and his purchasers that city survey no.6800 and survey no.483/A-1 were adjacent lands and the said city survey no.6800 was given to the property which he had purchased. The said writ petition has been referred to by the learned counsel Shri Brahme. It appears that the dispute was regarding the unauthorized construction and the breach of the town planning rules. The Hon'ble Division Bench directed the office of the Director of Town Planning to make a inquiry and find out the facts more particularly

about maintaining 10% open space excluding the margin space. The Director of Town Planning has made the inquiry in detail and recorded some findings.

4. The question before this Court is very short whether any part of the land belonging to the trust has been sold by the applicant to the third party and thereby affected the trust property. After having gone through the bunch of documents filed by the prosecution and the applicant, it reveals that there was a confusion as regards the city survey no.6800. New city survey number to field survey number 483/A-1 was given. The issue in the writ petition was altogether different. The prosecution has nothing to show that an inch of land arising out of the city survey no.6800 has been sold by the applicant to third party. The said land belonging to the trust is still intact; however, learned counsel Shri Brahme for the complainant is strongly arguing that by misleading the officers an attempt has been made by the applicant to transfer the trust property. After having gone through the FIR it has been alleged against the applicant that he has sold the land out of city survey no. 6800. However examining the papers in detail, no evidence as such is available.

5. Learned counsel for the applicants has vehemently argued that the learned Magistrate without applying the mind issued the directions under Section 156(3) of the Criminal Procedure Code.

Therefore, on the basis of false submissions, incorrect crime has been registered against the applicant.

6. Be that as it may, the record does not reveal the transfer of an inch of the land of the trust by the applicant. There may be confusion as regards the city survey number. The title of city survey no.6800 was never passed on the applicant. The parties are litigating in civil court. The overall facts of the case are not sufficient to believe that the custodial interrogation of the applicants will throw a light on the facts as alleged. Hence, the application deserves to be allowed. Therefore, the following order :

ORDER

(A) The Application is allowed.

(B) Interim protection granted to applicant no.2 by order dated 28.07.2022 is confirmed on the same terms of bail bonds.

(C) In the event of arrest, the applicant, Kishorkumar Mohanlal Bafna, be released on bail, on executing P.B. and S.B. of Rs.50,000/- (Fifty Thousand) with one solvent surety in the like amount in Crime No.128 of 2022 registered with Chalisgaon Road Police Station, District Dhule for the offence punishable under Sections 420, 465, 468, 471 r/w 34 of the Indian Penal Code, on the condition that he shall attend the police station as and when called by the Investigating Officer on written notice and shall not tamper with the prosecution witnesses.

(5)

(D) Criminal Application No.2632 of 2022 is allowed.

(S.G. MEHARE, J.)

Mujaheed//