

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

ANTICIPATORY BAIL APPLICATION NO.1410 OF 2021

Shankar S/o Sayanna Galewad

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Avishkar S. Shelke Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
...

WITH

ANTICIPATORY BAIL APPLICATION NO.1558 OF 2021

Shankar S/o Sayanna Galewad

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Avishkar S. Shelke Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 16th FEBRUARY, 2022

ORDER :

1. Applicant in both the Applications is one and the same. However, in Anticipatory Bail Application (ABA) No.1410 of 2021 the applicant is apprehending his arrest in connection with Crime No.691 of 2021 and in Anticipatory Bail Application (ABA) No.1558 of 2021 the applicant is apprehending his arrest in connection with Crime No.688 of 2021. Both the crimes have been registered with Nanded (Rural) Police Station, Nanded, for the offence punishable under Sections 120(B), 406, 409, 420, 467, 468, 471 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate for the applicant and learned APP for the respondent – State, in both the Applications. In order to cut-short, it can be stated that both the sides have made submissions in support of their respective contentions.

3. Crime No.691 of 2021 (ABA No.1410 of 2021) is the outcome of First Information Report (FIR) lodged by one Amrish Vijaykumar Jahagirdar. He lodged report against the present applicant along with the then Chief Executive Officer of Nanded

Merchants Co-operative Bank Limited, Nanded and present Chief Executive Officer (without name but by designation) of the said Bank, stating that they all have cheated him. It appears that he had purchased plot No.167 from Survey No.54/A/2 in Dasganu Nagar, Wasarni, Taluka and District-Nanded from applicant on 21st June 2012. He had even got the possession of the plot from the applicant. His name, thereafter, got mutated in the revenue records. He had developed the said plot and fenced it. However, thereafter on 28th January 2021 he came to know that the said plot has been put to auction by Nanded Merchants Co-operative Bank. It was found that the applicant had mortgaged the said plot to the said Bank and as he could not repay the loan amount, it was put to auction. He tried to get further information from the Bank, however, no proper information was given. He then felt cheated as no disclosure was made by the applicant regarding the said transaction and therefore, he has filed the said FIR.

4. The informant in Crime No.688 of 2021 (ABA No.1558 of 2021) is one Balasaheb Raosaheb Suryawanshi, who had purchased plot No.181 from the same Survey number on the same date as the informant in Crime No.691 of 2021 had purchased. This informant has also stated that the said plot was

mortgaged to Nanded Merchants Co-operative Bank and he could get knowledge about the same only on 28th January 2021.

5. It is to be noted that when ABA No.1410 of 2021 had come up before this Court on 10th December 2021, statement was made on behalf of the applicant, by relying upon the bank statement provided by the bank, that total loan that was borrowed by the applicant was Rs.45,00,000/- and he has cleared substantial amount. Applicant showed willingness to deposit Rs.10,00,000/- with the bank and therefore interim protection was granted to the applicant. Thereafter, on 17th December 2021 in ABA No.1558 of 2021 statement was made that the principal amount that was borrowed was Rs.17,87,231/- and outstanding amount was Rs.18,68,669/-. In that matter also the same orders were passed granting interim protection as intention was expressed that the applicant would pay the outstanding amount.

6. Thereafter, affidavit has been filed by the applicant before this Court on 8th February 2022 stating that he has made full payment of the loan and the Bank has executed release deed in his favour on 31st January 2022 and therefore, now, there is no encumbrance on plot Nos. 167 and 181. This fact has been

accepted by the learned APP as part of further progress in the investigation. Both the informants had already purchased the plots in the year 2012 itself, got the possession of the respective plots and it appears that the Bank never objected to the same in any form till 2021. The informants were interested in getting the plots free from encumbrances and now the same has been achieved as the applicant has stated on oath that he has cleared the entire dues. This will have to be considered for confirming the interim protection granted to the applicant.

7. In view of the aforesaid developments, it is not necessary for this Court to go into the merits of the case. However, if at all the merits are to be seen, then the Police papers would show that the documents have been collected, statement of witnesses have been recorded. The offence appears to be consisting of documents and therefore, physical custody of the applicant is not required. Ingredients of which offence has been made out and of which it has not been made out, need not be gone into now. But, still a statement can be made that there is scope for the interpretation taking into consideration the fact that the mortgage of the plots in favour of the Bank was on 24th July 2015. Whether applicant was holding legal title on that day when the sale deed in favour of both the informants was executed on

21st June, 2012, and whether Bank itself had seen the title documents of the said plots or not, are the questions. Therefore, for the subsequent transaction when there was no question of representation or talks between the applicant and the informants, whether the informants could be said to have been cheated, is a question. At the most, it can be said that subsequent transaction of mortgage in the year 2015 would have raised civil dispute and therefore the Applications need to be granted by confirming the interim protection already granted. Accordingly, following order is passed:-

ORDER

- i) Both the Applications stand allowed.
- ii) The interim protection granted to the applicant by this Court by order dated 10th December 2021 in Anticipatory Bail Application No.1410 of 2021 and interim protection granted by order dated 17th December 2021 in Anticipatory Bail Application No.1558 of 2021 stands confirmed. It is thus clarified that in the event of arrest of the applicant – Shankar S/o Sayanna Galewad in connection with Crime No.691 of 2021 registered with Nanded (Rural) Police Station, Nanded, for the offence punishable under

Sections 120(B), 406, 409, 420, 467, 468, 471 read with Section 34 of the Indian Penal Code, and also in connection with Crime No. 688 of 2021, registered with same Police Station, for the same offence, he be released on bail on PR Bond of Rs.50,000/- (Rupees Fifty thousand) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

iii) Applicant shall remain present before the Investigating Officer on every Thursday between 10.00 a.m. to 2.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

iv) Applicant shall not tamper with the evidence of the prosecution in any manner.

[SMT. VIBHA KANKANWADI , J.]