

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1522 OF 2021

RAMESH S/O TULSHIRAM MONDE
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. S. R. Bagal h/f Mr. B. N. Gadegaonkar
APP for Respondent-State : Mr. V. M. Kagne
Advocate for Assist to APP : Mr. S. C. Bhosle

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**WITH
CRIMINAL APPLICATION NO.3172 OF 2021**

AMRUTA D/O SURESH MONDE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. S. C. Bhosle
APP for Respondent-State : Mr. V. M. Kagne
Advocate for Respondent No.2 : Mr.S.R.Bagal h/f Mr. B.N.Gadegaonkar

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
21-01-2022**

**Date of Pronouncing The Order :
23-02-2022**

ORDER :

1. Criminal Application No.3172 of 2021 has been filed for assist to learned APP. Said application is allowed and disposed of.

2. In ABA No.1522 of 2021, the applicant is apprehending his arrest in connection with Crime No.450 of 2021, registered with Shivajinagar Police Station, Nanded, for the offences punishable under Section 406, 417, 420, 464, 467, 468, 471 read with 34 of the IPC.

3. Heard learned Advocate Mr. S. R. Bagal holding for Mr. B. N. Gadegaonkar for applicant, learned APP Mr. V. M. Bhagat well assisted by learned Advocate Mr. S. C. Bhosle for respondents.

4. It has been vehemently submitted on behalf of the applicant that the applicant is an extremely old age person of 75 years and he is suffering from various diseases, heart patient and has undergone angioplasty in 2016. It is alleged that along with the co-accused, he has committed the offence. If the FIR is seen and also the documents on record seen, then main allegations are against accused Manish, who is the nephew of the applicant. The ancestral property which was the subject matter of a civil suit and then in respect of which compromise decree was passed in Lok-Adalat, to which the applicant was a party, would show that definitely applicant is one of the owners of the suit property. Applicant never obtained

false death certificate of his father. He has not executed the sale deed nor tried to alternate the suit property on the basis of the false death certificate or at the time of applying for mutation in his name. The allegations against him are very vague, he has no intention to cheat anybody. He is ready to abide by the terms of the bail.

5. Per contra, the learned APP Mr. V. M. Kagne for respondent No1.-State, well assisted by learned Advocate Mr. S. C. Bhosle for the informant, strongly opposed the application and submitted that the property was belonging to the joint family of the applicant, informant's predecessor, and other in all nine persons. It was the property of deceased Tulshiram Monde i.e. the father of the applicant. Tulshiram-father of the applicant was survived by nine persons and being the member of Hindu Undivided Family, they had jointly purchased the immovable property. Later on out of nine persons few of them expired, yet the property remained to be the Joint Hindu Family property. Predecessor of the informant- late Suresh Tushiram Monde had filed Special Civil Suit No.86 of 2012 in the Court of C.J.S.D., Nanded for partition and separate possession. In that plaint, it was specifically contended that the Tulshiram expired on 17-05-1984 at Nanded. Thereafter, the said civil suit

was amicably settled in Lok-Adalat on 23-11-2013 and the decree was passed accordingly. The applicant is party to that compromise. Respondent No.2 and co-accused had thereafter prepared false and forged stamp and seal of Grampanchayat Barhali, Taluka Mukhed District Nanded, and then fabricated death certificate of Tulshiram Daulatram Monde by stating that he expired on 17-05-1985 at village Barhali. That death certificate was produced for getting the property mutated in the name of accused Manish and other co-accused, and thereafter, Manish has sold part of the property to accused No.4 Vitthal Shetti. This is with ulterior motive to grab the property of the joint family ownership, therefore, detailed investigation is required. Manish was arrested in this case who is in fact a practicing Advocate at Nanded, and he has undergone police custody. Inquiry was held when complaint was filed in respect of the death certificate prepared at village Barhari and the Block Development Officer has given report to Chief Officer, Zilla Parishad, Nanded, that the said death certificate is bogus and fabricated. When detailed investigation is required, the applicant does not deserve any protection and discretionary relief.

6. It is to be noted that it appears initially the informant had filed

written complaint with the Police Station, however, no offence came to be registered on the basis of the same, and therefore, the informant had approached Judicial Magistrate First Class, Nanded by filing Criminal Miscellaneous Application No.137 of 2021 for taking action under Section 156 (3) of Cr.P.C. That application came to be allowed and the police officer in-charge of Shivaji Nagar Police Station was directed to register the FIR and conduct the investigation. It also appears that present applicant and said Manish Monde, co-accused, had filed Criminal Revision No.84 of 2021 before learned Sessions Judge under Section 397 of Cr.P.C., challenging the said order of the learned Magistrate of sending the matter for investigation under Section 156 (3) of Cr.P.C. Learned Sessions Judge, Nanded by order dated 15-11-2021 dismissed the revision and upheld the order passed by learned Magistrate. Ultimately, the FIR has been registered against four persons including the present applicant. Accused Manish Monde appears to have been arrested.

7. The documents collected during the course of investigation as well as filed by the original informant and the present applicant, would show that the applicant was party to Special Civil Suit No.86 of 2021, which was filed by Suresh Monde for partition and separate

possession. It came to be compromised before Lok-Adalat on 23-11-2013 and accordingly decree has been passed. The decree states that though the sale deed is not in the name of plaintiff and defendants, yet it is the property of the joint family and all of them are having equal right over the suit properties. They agreed that they would enjoy the property collectively. Even accused Manish is signatory to the compromise.

8. The documents further show that death certificate has been got issued showing that Tulshiram Daulatram Monde expired on 17-05-1985 at Barhali, Taluka Mukhed District Nanded, however, in the said special civil suit as well as the document issued by Nanded Waghala City Municipal Corporation on 19-07-2021, which is a death certificate of Tulshiram Daulatrao Monde, that he expired on 17-05-1984 in Newasekar Hospital, Nanded. The registration of the death was done on 18-07-1984 itself. Thus, even the Block Development Officer has given report to Chief Executive Officer, Zilla Parishad, Nanded, that the death certificate stated to have been issued by Grampanchayat office, Barhali, is forged document. On the basis of that document it is stated that names of present applicant, Manish and co-accused came to be recorded in the revenue record.

However, it can be seen that only Manish has executed sale deed in favour of Vitthal Shetty. Those documents have been collected by the Investigating Officer. There appears to be further document in the nature of getting the building permission sanctioned in the name of Janardhan Tulshiram Monde, Ramesh Tulshiram Monde (applicant), Manish Raghunath Monde. The question then arises as to whether without signing of the applications requisite form, taking such permission would have been granted in favour of the applicant. It definitely allows this Court to infer at this stage that those applications as well as documents were signed by the present applicant. That means, with a knowledge that still there are sharers in the property, yet posing themselves as the only heirs or owners of the property before the municipal authorities, that permission was sought. Therefore, there appears to be a *prima facie* evidence against the present applicant that he has caused wrongful loss to the informant and wrongful gain to himself. Therefore, taking into consideration the evidence so far collected, the involvement of the co-accused also and the documents those have been collected, the offence appears to be serious one. The age of the applicant will not be the only criteria to grant him bail. Rather even at this age, it can be said that he has not considered the rights of the co-sharers and

the present applicant is not a layman, he is a medical practitioner. When thorough investigation is required, taking into consideration the contents also, and the fact that when his involvement is shown, the discretionary relief or extraordinary powers of this Court under Section 438 of Cr.P.C. cannot be used in his favour. Though this Court had granted interim protection to the applicant, it was before the documents could be produced and the police papers could be perused. After the perusal of all those documents, it can be said that this is not a fit case where the discretion can be used in favour of the applicant. Hence, application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-