

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

**ANTICIPATORY BAIL APPLICATION NO.1621 OF 2021
WITH
CRIMINAL APPLICATION NO.266 OF 2022**

- 1) Shaikh Wasim Shaikh Sardar,
- 2) Shahnawaj Khaled Kureshi,
- 3) Samir Khaled Kureshi,
- 4) Naheb Rafik Kureshi

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr.P.R. Katneshwarkar Advocate i/b. Mr. Mudassar N. Sayyad Advocate for Applicants in Anticipatory Bail Application No.1621 of 2021.

Mr.A.M. Phule, A.P.P. for Respondent-State.

Mr.B.A. Dhengle Advocate for Applicant in Criminal Application No.266 of 2022 for assist to APP.

...

WITH

**ANTICIPATORY BAIL APPLICATION NO.1575 OF 2021
WITH
CRIMINAL APPLICATION NO.265 OF 2022**

- 1) Premchand Badrilal Mutha,
- 2) Hemchand Premchand Mutha

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
- 2) Superintendent of Police, Jalna,
Taluka & District-Jalna.

...RESPONDENTS

...
 Mr.R.R. Kazi Advocate for Applicants in Anticipatory Bail
 Application No.1575 of 2021.
 Mr.A.M. Phule, A.P.P. for Respondent-State.
 Mr.B.A. Dhengle Advocate for Applicant in Criminal
 Application No.265 of 2022 for assist to APP.

...

WITH

**ANTICIPATORY BAIL APPLICATION NO.1634 OF 2021
 WITH
 CRIMINAL APPLICATION NO.264 OF 2022**

Sagar S/o Mahesh Daxini

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) Superintendent of Police, Jalna,
Taluka & District-Jalna.

...RESPONDENTS

...
 Mr.Satej S. Jadhav Advocate for Applicant in Anticipatory
 Bail Application No. 1634 of 2021.
 Mr.A.M. Phule, A.P.P. for Respondent-State.
 Mr.B.A. Dhengle Advocate for Applicant in Criminal
 Application No.264 of 2022 for assist to APP.

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 19th JANUARY 2022

DATE OF PRONOUNCING ORDER : 22nd FEBRUARY 2022

ORDER :

1. Criminal Application Nos. 264 of 2022, 265 of 2022 and 266 of 2022, moved for assist to APP, stand allowed and disposed of.
2. All the three Anticipatory Bail Applications are relating to the same offence registered with Kadim Jalna Police Station, Jalna, District-Jalna vide Crime No.542 of 2021. All the applicants are apprehending their arrest in connection with the said offence which has been registered under Sections 420, 468, 470, 471 read with Section 34 of the Indian Penal Code.
3. Heard learned Advocates for the applicants and learned APP for the respondent – State, well assisted by the learned Advocate for the informant.

4. It has been vehemently submitted on behalf of the applicants that the informant's daughters are the subsequent purchasers and therefore, there was no iota of contract between the applicants and those purchasers. Question of cheating the subsequent purchasers does not arise. Informant appears to have lodged the report on behalf of her daughters who allegedly purchased three pieces of land from Gat No.162 situated at village Sindhi Kalegaon, District-Jalna on 8th October 2020. The boundaries have been mentioned. It is then stated that the daughters of the informant, who are purchasers of the lands, reside at Bengaluru in Karnataka State in connection with their service. They had executed power of attorney on 25th March 2021 in the name of the informant. It has been then contended that the predecessors of the purchasers were one Ambadas Sangle, Sheela Sangle and Sarla Hajari, to whom one Premchand Badrilal Mutha and Hemchand Premchand Mutha had sold those pieces of land on 22nd October 2017. In spite of this, it is stated that, said Premchand Mutha and Hemchand Mutha executed sale deed of the same pieces of land on 19th March 2021 and it is further stated that with common intention in order to grab the land, the informant / her daughters have been cheated by the present applicants.

5. The applicants in Anticipatory Bail Application (ABA) No.1621 of 2021 are the four purchasers out of those eight in whose favour sale deed was executed. The applicant in ABA No.1634 of 2021 is the witness to the sale deeds, whereas the applicants in ABA No. 1575 of 2021 are the Mutha's who had sold the property to the predecessors of the informant.

6. Applicants in ABA No.1575 of 2021 have further submitted that the predecessors of the informant have in fact cheated the applicants as they had replaced the page describing the boundaries of the properties which were sold. The applicants could not realize that mistake initially and in fact the copy which was given to them has also been produced which has even the stamp and seal of the Sub-Registrar's Office. The property which the applicants had intended to sell to the purchasers of the informant was different. Further, Civil Suit in respect of dispute about the land was taken up before the Civil Court as well as revenue authorities and they have disputed recording of mutation. Even the informant's daughters have also filed Regular Civil Suit No.228 of 2021 before the Civil Judge, Senior Division, Jalna for declaration and permanent injunction. Prior to that Special Civil Suit No.75 of 2018 is also pending before the same

Court, which is in respect of the same property and it is filed by these applicants. That suit was filed after the applicants realized that the page containing the description of the property has been changed and wrong boundaries have been mentioned. When the dispute is before the Civil Court, it cannot be stated that there was any kind of intention to cheat. It is in fact the cheating by the predecessors of the informant's daughters, which has led to the dispute. The applicants custodial interrogation is not necessary. They deserve to be protected.

7. Learned APP, with the able assistance of the learned Advocate for the informant i.e. applicant in Criminal Application Nos.264 of 2022, 265 of 2022 and 266 of 2022, strongly opposed the applications and submitted that the informant's daughters had purchased three pieces of land with the help of their hard earned money and they had taken necessary precautions by making due inquiry. They are having custody of those three pieces of land. However, Premchand Mutha and Hemchand Mutha, the original owners have intentionally created certain documents and even gift deed has been created, which is stated to be executed by Premchand Mutha in favour of Hemchand Mutha and it is in respect of 3 Hectors 3 R out of 6 Hectors 6 R, on 27th January 2017. Still on 22nd December 2017

they both had entered into the sale deed in respect of 5 Acres i.e. 2 Hectors, out of 3 Hectors 3 R from the same Gat number. Now they are coming with the case that the page has been changed. The applicants in ABA No.1575 of 2021 had intentionally, thereafter, executed the sale deeds in favour of eight persons by way of different sale deeds. These are falsely created documents and thereby the informant has been cheated. Hemchand Mutha had no authority to execute those sale deeds in favour of those eight persons. Thorough investigation is required and therefore, the discretionary powers need not be used in favour of the applicants.

8. It is to be noted that as per the informant's case her daughters had purchased three pieces of land from Ambadas Sangle, Sheela Sangle and Sarla Hajari on 8th October 2020. Which documents the purchasers had considered at the time of purchase is not known and it will have to be explained by the prosecution at the time of trial. The fact remains that the applicants in ABA No.1575 of 2021 have produced on record two copies of sale deeds, in which the description of the property is different. In one sale deed the boundaries those have been given in respect of 2 Hectors i.e. 5 Acres land which they have sold and what they agreed to sell is one piece of land and the other

which has been stated to be the sale deed on which the informant is relying i.e. sale deed in between her predecessors and the Mutha's, is of three different pieces of land. The question may arise that if Mutha's were the owners of in all 7 Hectors 37 R land minus barren 29 R land, out of which Premchand Mutha is owner of 3 Hectors 3 R land and Hemchand Mutha is owner of 3 Hectors 3 R land, then why they would sell three different pieces. It is normal behaviour of a seller as well as buyer that they would like to sell and purchase a single piece of land, but then if such different pieces are to be sold then there has to be a reason. The fact remains that taking into consideration this difference in the description, Premchand Mutha as well as Hemchand Mutha raised the dispute about the same with the revenue authorities. Premchand Mutha has also lodged First Information Report bearing Crime No.68 of 2021 before the same Police Station on 25th February 2021, which is for the offence under Sections 420, 468, 469, 471, 506 read with Section 34 of the Indian Penal Code. But it is against one Shaikh Mustak Shaikh Amir and Santosh Jahagirdar. It has been stated in the said complaint that Premchand Mutha is the owner of 15 Acres land in Gat No.162 situated at village Sindhi Kalegaon, District-Jalna. He was intending to sell the land and then one

Shaikh Mustak Shaikh Amir and Shaikh Asef Shaikh Amir approached him. They offered to purchase 14 Acres 37 Gunthas land from him for a consideration of Rs.23,51,000/- per Acre. Said Shaikh Mustak had given him an amount of Rs.84,78,293/- as earnest. Rest of the amount was agreed to be paid at the time of sale deed. According to Premchand Mutha, those two prospective purchasers avoided to get the sale deed executed for about four years and thereafter they told that since they do not have sufficient amount they would purchase only 5 Acres of land. Accordingly on the say of Shaikh Mustak, Premchand Mutha executed sale deed in the name of servants of Shaikh Mustak, namely, Ambadas Sangle, Sheela Sangle and Sarla Hajari. However, there was cheating to him and all the accused persons have committed above offence.

9. Thus, taking into consideration the fact that the original owner is making allegations about forgery and it appears that the dispute is mainly of civil in nature, the investigation of the matter depends on documents.

10. As regards the applicants in ABA No.1621 of 2021 are concerned they are the subsequent purchasers of the land from the applicants in ABA No.1575 of 2021 and applicant in ABA

No.1634 of 2021 is the witness to the sale deeds. There was absolutely no privity of contract or any kind of representation to the informant or to her daughters by them. Independently, there is transaction between the applicants herein. Therefore, taking into consideration all these aspects the physical custody of the applicants is not required for the purpose of investigation. The investigation can go on in absence of their physical custody and in order to facilitate further investigation if attendance is granted, then it would be in the interest of justice. No condition appears to have been imposed at the time when applicants were released on interim protection and therefore, this condition deserves to be added. With these observations, following order is passed:-

ORDER

i) Anticipatory Bail Application No.1621 of 2021, Anticipatory Bail Application No.1575 of 2021 and Anticipatory Bail Application No.1634 of 2021 are allowed.

ii) Interim protection granted to the applicants in Anticipatory Bail Application No.1621 of 2021 by this Court by order dated 31st December 2021 stands confirmed. Interim

protection granted to the applicants in Anticipatory Bail Application No.1575 of 2021 by this Court by order dated 22nd December 2021 stands confirmed. Interim protection granted to the applicant in Anticipatory Bail Application No.1634 of 2021 by this Court by order dated 3rd January 2022 stands confirmed.

iii) It is thus clarified that in the event of arrest of the applicants in Anticipatory Bail Application No.1621 of 2021 viz. applicant No.1 – Shaikh Wasim Shaikh Sardar, applicant No.2 – Shahnawaj Khaled Kureshi, applicant No.3 -Samir Khaled Kureshi and applicant No.4 – Naheb Rafik Kureshi, and in the event of arrest of the applicants in Anticipatory Bail Application No.1575 of 2021 viz. applicant No.1 – Premchand Badrilal Mutha and applicant No.2 – Hemchand Premchand Mutha, in connection with Crime No.542 of 2021 registered with Kadim Jalna Police Station, Jalna, District-Jalna for the offence punishable under Sections 420, 468, 470, 471 read with Section 34 of the Indian Penal Code, they be released on bail on PR Bond of Rs.20,000/- (Rupees Twenty Thousand) each, with one or more sureties in the like amount.

iv) It is also clarified that in the event of arrest of applicant – Sagar S/o Mahesh Daxini in Anticipatory Bail Application No.1634

of 2021 in connection with Crime No.542 of 2021 registered with Kadim Jalna Police Station, Jalna, District-Jalna for the offence punishable under Sections 420, 468, 470, 471 read with Section 34 of the Indian Penal Code, he be released on bail on PR Bond of Rs.30,000/- (Rupees Thirty Thousand) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.

v) The Applicants in all the Anticipatory Bail Applications shall attend Kadim Jalna Police Station on every Thursday between 10.00 am. to 12.00 noon till filing of the charge-sheet and co-operate with the investigation.

vi) The applicants shall not tamper with the evidence of the prosecution in any manner.

vii) Criminal Application No.264 of 2022, Criminal Application No.265 of 2022 and Criminal Application No.266 of 2022 stand disposed of.

[SMT. VIBHA KANKANWADI , J.]