

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. ANTICIPATORY BAIL APPLICATION NO. 374 OF 2022

Bajirao Ambu Gaikwad	..Applicant
Vs.	
The State of Maharashtra	..Respondent

**WITH
CRI. ANTICIPATORY BAIL APPLICATION NO. 375 OF 2022**

Baliram Murlidhar Pagar	..Applicant
Vs.	
The State of Maharashtra	..Respondent

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Mr. Aniket U. Nikam i/b. Mr. Piyush R. Toshnival, for the Applicants.
Mr. A. R. Kapadnis, APP for the Respondent / State in ABA 374/2022.
Mr. Y. Y. Dabke, APP for the Respondent / State in ABA 375/2022.
PSI Vijaykumar S. Kothawale, Nashik Taluka Police Station.

**CORAM : C.V. BHADANG, J.
DATE : 11 FEBRUARY 2022
(Through Video Conferencing)**

P.C.

. Heard for some time.

2. The Applicant Bajirao Ambu Gaikwad is the Sarpanch while the Applicant Baliram Murlidhar Pagar is the Village Development Officer at Village Vilholi, District Nashik. Both these Applicants, apprehending arrest, in Crime No.15/2022 of Nashik Taluka Police Station, under Section 420, 468 and 471 r/w. 34 of IPC, are seeking anticipatory bail.

3. The aforesaid crime is registered on the basis of complaint lodged by Shashikant Vidhate, who is working as a Circle Officer. The gravamen of the allegation is that the Applicants as officer bearers of the Gram Panchayat without any authority had shown a particular lay out plan of plots in Gat Nos.149/2, 150/2 and 150/3 at Village Vilholi, as a sanctioned layout. The Applicant Bajirao Ambu Gaikwad is also alleged to have executed sale deeds of some of the plots in favour of third parties.

4. I have heard the learned counsel for the parties. Perused record.

5. Learned counsel for the Applicants submitted that the offence under Section 420, 468 and 471 of IPC carry sentence of imprisonment upto seven years and therefore, as per the decision of the Supreme Court in *Arnesh Kumar Vs. State of Bihar and Anr.*¹, the Investigating Officer is required to issue notice under Section

¹ (2014) 8 SCC 273

41A of Cr.P.C. before proposing arrest of the Applicants. It is submitted that no such notice has been received by the Applicants.

6. Learned APP, on instructions from the Investigating Officer, states that a notice under Section 160 of Cr.P.C. has been issued. However, a notice under Section 160 of Cr.P.C. is to a witness for the purposes of investigation and not an Accused. Learned APP, therefore submits that the Investigating Officer shall issue a notice under Section 41A of Cr.P.C. in the event the Investigating Officer proposes the arrest of the present Applicants as Accused.

7. In such circumstances, the Criminal Applications are disposed of, with a direction to the Investigating Officer to issue a clear notice of three working days to the Applicants under Section 41A of Cr.P.C., in the event the Investigating Officer proposes their arrest.

8. Liberty to the Applicants to renew the request for anticipatory bail, in the event of receipt of such notice.

C.V. BHADANG, J.