

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

ANTICIPATORY BAIL APPLICATION NO.389 OF 2022

1. Umashankar Ranchhodlal Paliwal, &
2. Pawan Kumar Sharma. Applicants
Versus
The State of Maharashtra Respondent

Mr. Niranjan Mundargi, Advocate i/b. Ashutosh R. Gole, for
the Applicants.

Ms. Sharmila S. Kaushik, APP for the Respondent-State.

Mr. Kishor Patil, Advocate a/w. Amol Mhatre, Sameer Mhatre,
for the original complainant.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th FEBRUARY, 2022

P.C. :

1. The applicants are seeking anticipatory bail in connection with C.R.No.253/2021 dated 2.7.2021 registered at Manikpur Police Station, Vasai under Sections 420 read with 34 of the Indian Penal Code.

2. Heard Shri Niranjan Mundargi, learned counsel for the applicants, Smt Sharmila Kaushik, learned APP for the

State and Shri Kishor Patil, learned counsel for the original complainant.

3. The FIR is lodged by one Balaram Mankar. He has made grievance about the four land transactions. His case is that he was introduced to applicant No.1 by one Bhikamchandra Sisodiya in 2015. Applicant No.1 had shown interest in purchasing the informant's lands. The FIR is about the four land transactions as under :

[I] Survey No.192/1 admeasuring 213.10 sq. mtrs. situated at village Diwanman, Taluka-Vasai. Out of which, the transaction was for 130 sq.mtrs. The price was fixed at Rs.9 Crores. This land was to be purchased by applicant No.1 and his friend Mangilal Gujar. The sale deed was signed on 4.2.2016. The allegations are that applicant No.1 had given cheques of Rs.10 Lakhs which were dishonored and the agreed price of Rs.9 Crores was not paid.

[II] Survey No.157, Hissa No.2 situated at village Diwanman, Taluka-Vasai. From that land 53 Gunthas were to

be sold for Rs.2,92,12,000/- to applicant No.1 and his friend Satyandra Patola. The sale deed was registered on 17.12.2015 after signing. The co-purchaser Patola had given cheques of Rs.10 Lakhs and those were dishonored, however, subsequently that amount was deposited in the informant's account. He was not paid Rs.2,82,12,000/-.

[III] Survey No.63 situated at village Diwanman, Taluka-Vasai. From that land, the land admeasuring 107.5 gunthas were to be sold for Rs.6 Crores to both the applicants. The sale deed was registered on 17.12.2015. The informant had received Rs.15 Lakhs and remaining Rs.5,85,00,000/- were not paid.

[IV] The informant's friend Vinay Patil was similarly cheated. He was made to enter into transaction in respect of Survey No.192/4 situated at village Diwanman, Taluka-Vasai admeasuring 35 Gunthas for Rs.4,97,15,000/-. He had received Rs.10 Lakhs but Rs.4,87,15,000/- were not paid to the applicant.

Thus, according to the first informant in all for these lands, the total amount of Rs.22,89,27,000/- were to be paid by applicant No.1 and others, including applicant No.2. The sale deeds were registered by misleading the sellers and in respect of lands bearing Survey No.192/1 and 192/4, the names of applicant No.1, Magilal Gujar and Satyendra Badola were entered in the 7/12 extracts in respect of land transactions. On this basis, the FIR is lodged.

4. Learned counsel for the applicant submitted that the registered sale deed shows that the sellers had received the entire amount of transaction. This acknowledgment cannot be ignored which shows that the applicants have not committed any offence. He submitted that the informant is not an illiterate person. The sale deeds were registered before the Registrar and no grievance was made. At the most, it can be a civil dispute, but, no case of cheating or misappropriation of any property is made out against applicant No.1.

5. As far as applicant No.2 is concerned, he was involved only in one transaction for which 7/12 extract does

not show his name. Therefore, the informant or other sellers has a remedy of approaching the civil court for appropriate relief against the applicant No.2.

6. He submitted that the accounts of applicant No.1 shows that he had sufficient cash in hand which was used in these transactions. The amount was received in cash and therefore considering that acknowledgments are signed by the informant and other sellers, no offence of cheating or misappropriation is made out.

7. Learned APP relied on the investigation papers to oppose this application. She submitted that the sellers have not received any amount as is mentioned in the FIR and they have been deprived of their actual ownership of lands which are subject matter of this FIR. There are statements of witnesses supporting the case of the informant.

8. Learned counsel for the intervener supported the contents of the FIR to contend that in view of the huge amount involved, the offence is made out.

9. I have considered these submissions. As far as the acknowledgment of the amount is concerned, in respect of the land at Survey No.63 the price was fixed at Rs.6 Crores. The agreement itself mentions that Rs.6 Crores were paid by cheque/cash and the acknowledgment was annexed. Therefore, the acknowledgment also mentions that Rs.6 Crores were received in cheque/cash. The details of cheques are mentioned. However, according to the first informant some cheques were dishonored and he had not received the agreed amount. As far as the cash is concerned, there are no further details provided in the acknowledgment or in the agreement and, therefore, the informant's statement that he had not received any cash amount needs to be seriously looked at.

10. As far as the sale transaction in respect of the land at Survey No.192/4 is concerned, the price was fixed at Rs.4,97,15,000/- and the acknowledgment mentions only Rs.10 Lakhs by cheque. However, the sale deed itself mentions that the entire amount was paid through cheques. This

obviously is not supported by any bank entries and, therefore, the averments in the sale deeds are not correct and not supported by the acknowledgment receipt.

11. As far as the land at Survey No.157 is concerned, the sale deed mentions that the price was fixed at Rs.2,92,12,000/-, out of which Rs.10 Lakhs were paid. The acknowledgment was made only for Rs.10 Lakhs. There is no reference to the balance amount.

12. In respect of the land at Survey No.192/1 is concerned, the price was fixed at Rs.9 Crores. The sale deed mentions that Rs.9 Crores were paid and the acknowledgment mentions Rs.9 Crores were paid.

13. In this context, the statement of the witness Bhikamchandra Sisodiya is important. He had introduced applicant No.1 to the informant. He has stated that he was fully aware of the entire transaction. He had referred to these four lands. He has specifically stated that at the time of registration of the sale deed at the instance of this witness the

informant had made signature on the sale deed and at that time cheque of Rs.10 Lakhs was given, but, it was dishonored and the amount of Rs.9 Crores in respect of survey No.192/1 was not paid to the informant. He has supported the informant's case in respect of other transactions also mentioning that the amount was not paid. This statement assumes importance because he was aware of the transaction and on some of the sale deeds he was the signatory.

14. The statement of Vinay Patil, whose land is also part of the transactions, has stated that he has not received the agreed amount and Bhikamchandra Sisodiya had told him that he has not signed any forms for mutating 7/12 entries in favour of applicant No.1.

15. These two statements clearly show that the sellers in these transactions were cheated and the forms for mutating entry in the revenue record were not signed by the sellers or power of attorney holders and, therefore, the offence assumes seriousness. Though Shri Mundargi tried to show the balance-sheet of applicant No.1, there was nothing to show that

applicant No.1 had such huge cash in hand to use in these transactions. Therefore, in this background the offence appears to be serious which needs custodial interrogation of applicant No.1 because his name was entered into in the revenue records and none of the sellers, according to the informant, has signed the forms for mutating 7/12 extracts.

16. As far as applicant No.2 is concerned, he was concerned only in one transaction for which the revenue record was not changed in his favour. Therefore, the seller has a remedy of approaching the civil court and there was no question of filing any forged forms for changing his name in the revenue records. Therefore, applicant No.2 deserves protection from arrest.

17. As far as applicant No.1 is concerned, he has not offered any possible explanation. His custodial interrogation is necessary. The amount involved is very huge and all these land sellers were induced into signing the documents thereby depriving them of their property. It is difficult to believe that about more than Rs.22 Crores were paid in cash.

18. In this view of the matter, following order is passed:

ORDER

- (i) The application in respect of applicant No.1- Umashankar Ranchhodlal Paliwal is rejected.
- (ii) The application in respect of applicant No.2 Pawan Kumar Sharma is allowed. In the event of his arrest in connection with C.R. No.253/2021 registered with Manikpur Police Station, Vasai, applicant No.2 is directed to be released on bail on his furnishing a PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Applicant No.2 shall attend the concerned police station as and when called and shall cooperate with the investigation.
- (iii) Anticipatory Bail Application stands disposed of accordingly.

PRADIPKUMAR
PRAKASHRAO
DESHMANE

Digitally signed by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date: 2022.02.17
14:23:04 +0530

(SARANG V. KOTWAL, J.)