IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 411 OF 2022

Kishorbhai Nandlal Shah .... Applicant
Versus
The State of Maharashtra .... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 412 OF 2022

Vimal Kishorbhai Shah .... Applicant
Versus
The State of Maharashtra .... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 413 OF 2022

Nainesh Kishorbhai Shah .... Applicant
Versus
The State of Maharashtra .... Respondent

WITH
INTERIM APPLICATION NO. 541 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 411 OF 2022
WITH
INTERIM APPLICATION NO. 540 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 412 OF 2022
WITH
INTERIM APPLICATION NO. 539 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 413 OF 2022

Vishal Ashok Bhoir …. Intervenor.

Mr. Amit Desai, Senior counsel a/w. Mr. Subodh Desai, Mr. Samit Shukla and Ms. Anjali Shah i/b. DSK Legal for Applicant IN A.B.A.No.411/2022.
Mr. Prasad Dhakephalkar, Senior counsel a/w. Mr. Subodh Desai, Mr. Samit Shukla and Ms. Anjali Shah i/b. DSK Legal for Applicant IN A.B.A.No.412/2022.
Mr. Girish Godbole a/w. Mr. Subodh Desai, Mr. Samit Shukla and Ms. Anjali Shah i/b. DSK Legal for Applicant IN A.B.A.No.413/2022.
Dr. Abhinav Chandrachud a/w. Shweta R. Rathod i/b. Elixir Legal Services for Intervenor in all applications.
Smt. A. A. Takalkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 16th FEBRUARY 2022

P.C. :

1. All these three applications are decided by this common order because they arise out of the same investigation and the same registered F.I.R. Whenever necessary, the applicants are referred to by their names.

2. Heard Shri. Amit Desai, learned Senior counsel for the applicant in A.B.A.No.411 of 2022, Shri. Prasad Dhakephalkar, learned Senior counsel for the applicant in A.B.A.No.412 of 2022, Shri. Girish Godbole, learned counsel for the applicant in

A.B.A.No.413 of 2022, Dr. Abhinav Chandrachud and Shweta Rathod, learned counsel for the Intervenor in all the applications and Smt. Takalkar, learned APP for the State.

3. The Applicants are seeking anticipatory bail in connection with C.R.No.18 of 2022 registered at Thane Nagar Police Station, under sections 420, 465, 467, 468 and 471 r/w. 34 of the Indian Penal Code (for short 'IPC').

4. The First Information Report (for short 'F.I.R.) is lodged by one Vishal Bhoir. He has stated that, he has ancestral land at village Mogarpada, Taluka and District Thane, bearing survey No.34, Hissa No.41 and 42. The F.I.R. mentions that, originally the informant's great grand father was mentioned as the tenant in the 7/12 extracts. In the year 1968 he became the owner under the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "said Act"). The subject matter of this F.I.R. is the transaction in respect of this land. The informant's father Ashok was having 1/4th share in this land. In the year 2016, the informant received a notice from the Sub Divisional Officer, Thane in respect of an R.T.S. Appeal filed by M/s. Vimal Builders for condonation of

delay. According to the first informant, he made inquiries and he came to know that, on 13/04/2006 the informant's father and others had executed Power of Attorney in favour of the applicant Kishor Shah, who, in turn, had made an application for permission under section 43 of the said Act for entering into sale agreement of that land. The said application was made on 15/03/2011. The applicant Kishor Shah was granted permission on 06/06/2011. After that, the applicant Kishor used that power of attorney and executed a registered sale deed on 29/03/2012 in favour of M/s. Merit Magnum Construction. The applicant Kishor Shah also made an application before the Talathi for entering his name in the revenue records on 04/04/2012. Vide Mutation Entry No.603 the name of M/s. Vimal Builders were entered on 07/11/2014. However, the said mutation entry was cancelled by the Circle Officer on the ground that, permission U/s.63 of the said Act was not taken. The matter went for adjudication before the revenue authorities. According to the first informant, he made inquiries and came to know that the applicant Kishor had submitted forged documents with application for permission U/s.43 of the said Act.

On further inquiries the informant came to know that the applicants had produced some documents related to purchase of land in district Beed. The entire transaction was fraudulent and the documents were forged. The informant had grievance about the registered confirmation deed and the development agreement executed in the year 2006 in favour of the applicant Kishor Shah. On this basis the F.I.R. is lodged.

5. Shri. Amit Desai, learned Senior counsel for the applicant Kishorbhai Shah submitted that the applicant is 76 years of age. The transaction is an old transaction which was entered into year 2006. The dispute started in the year 2017 and a civil suit is already filed. There are no allegations that the applicant Kishor himself prepared any of the forged documents. He had many employees and one of those employees has used a local source and has obtained those documents. The applicant is absolutely unaware of the existence of such documents. In any case, those documents were irrelevant because permission U/s.43 of the said Act was not necessary at all. By virtue of those documents, no legal rights were created in anybody's favour. The

transaction with the informant is still valid. The evidence consists of documentary evidence. The documents are already in custody of police and, therefore, for that purpose, applicant's custodial interrogation is not necessary. No loss was caused to the informant or other previous owners. At the highest, it is a civil dispute.

6. Shri. Prasad Dhakephalkar, learned senior counsel appearing for the applicant Vimal Shah submitted that the civil suit was filed by the informant on 19/04/2018. The allegations in that civil suit are almost identical to the averments made in the F.I.R. The F.I.R. itself is lodged in the year 2022. This delay shows that, it is filed as an afterthought to extract more money because prices have escalated exponentially. The informant, out of greed, has initiated this criminal proceeding. Filing of the civil suit is not even mentioned in the F.I.R., which shows that the informant has not approached the court with clean hands. The informant had filed a private complaint and in that complaint, order U/s.156(3) of Cr.p.c. is passed resulting in lodging of F.I.R. Admittedly, money was taken by the informant's father at the time of transaction. The informant himself is a beneficiary, therefore, at the highest, it is a

civil dispute. He also submitted that permission was not necessary at all. Shri. Dhakephalkar submitted that, initially the Municipal Corporation had reserved those lands and after lapse of 10 years the applicants were entitled to get back their lands and the matter was carried to the Hon'ble Supreme Court and even there the applicant had succeeded.

7. Shri. Girish Godbole, learned counsel appearing for the applicant Nainesh Shah, apart from adopting the arguments of other senior counsel, explained why permission was not necessary at all. He relied on Section 88 of the said Act and contended that, since the lands were within the jurisdiction of Thane Municipal Corporation and since the State Government has already issued notification under that section, the provisions of Section 43 or 63 of the said Act were not applicable and no such permissions were needed.

8. Dr. Abhinav Chandrachud and Ms. Shweta Rathod, learned counsel appearing for the Intervenor submitted that the real issue is not the intention of the informant, the real question involved is use of forged documents by the applicants. The

applicants themselves believed and had therefore made an application for permission U/s. 43 of the said Act. For that purpose they used forged documents purportedly taken from the Government record. The informant had set the criminal law in motion but the investigation would reveal that the applicants have used forged documents in the nature of 7/12 extract, 8A extract and certificate purportedly issued by the Tahsildar showing that the applicant Kishor Shah was an agriculturist. All these documents are forged documents and they were actually used by the applicants. It does not matter whether the permissions were necessary or not. The fact remains that the documents were used and permissions were obtained by the applicants. Therefore, he submitted that the custodial interrogation of the applicants is necessary.

9. Dr. Chandrachud submitted that the matter before the Hon'ble Supreme Court was the totally different subject matter concerning the reservation and lapse of reservation of that particular land. Though, the informant had preferred an interim application, the question before the Hon'ble Supreme Court was

different.

10. Learned APP relied on the investigation carried out so far and placed copies of the documents which are the subject matter of this investigation before the court. She submitted that the offence is serious. The investigating agency needs to find out whether these certificates and documents were used by the applicants in any other land transaction. She further submitted that, even in the present case the forged documents were actually used. It is necessary to find out exact modus operandi in creating these documents. She submitted that the documents were created to benefit the applicants and, therefore, the applicants cannot feign ignorance about creation of those documents. It cannot be said that, the employees of the applicants created those documents and the applicants were kept in the dark.

11. I have considered these submissions. I have perused the investigation papers. The investigation papers show that the application for permission to sell the land was made by the applicant Kishor Shah as a Power of attorney holder of the informant's father and others. That application was made on

15/03/2011. In support of that application, the applicant Kishor had produced 7/12 extract of Survey No.47, village Jatvad, Taluka Shirur. It is referred in the Circle Officer's inquiry report for permission U/s.43 of the said Act. The applicants had also relied on the Tahsildar Shirur's certificate that the applicant Kishor was an agriculturist. Survey No.47 at village Jatvad was shown as an agricultural land. Forged 7/12 extract and 8A extract in respect of the same land were produced. The investigation mentions that, those documents were forged. The Tahsildar's certificate in favour of Kishor was not issued from that office. The 7/12 extracts were forged and lands were in somebody's else name. The entire transaction was fraudulent and the documents were created and actually used by tendering them before the Government officer for obtaining permission U/s.43 of the said Act. The copies of the documents annexed to the A.B.A.No.411 of 2022 show that, all these three applicants had executed power of attorney in favour of one Ankush Devkate. The said document bears signature of all these applicants in front of their photograph with thumb impressions. The said document clearly mentions that power of attorney was executed in favour of Ankush Devkate to enable him to make applications for getting certificate that all of them were agriculturists. It cannot be said that the applicants were not aware of the contents of the power of attorney and they cannot shift the blame on their employees. They had signed this documents. They were aware that they were not agriculturists. In any case, these documents are not seriously disputed. Based on this power of attorney, fake transaction was entered into in respect of survey No.47, village Jatvad, Shirur, Dist. Beed. Forged 7/12 extracts were used and ultimately all these documents were used in obtaining permission U/s.43 of the said Act.

12. It does not matter whether the permission was required U/s.43 or Section 63 of the said Act, or it was not necessary at all in view of S. 88 of the said Act. The fact remains that the forged documents were created and actually used for making an application U/s.43 of the Said Act. The permission was in fact obtained and all this was done under the signature of the applicant Kishor Shah. The beneficiaries obviously were all these applicants. Therefore, it can not be said that everything was done

by their employees behind their back. The offence is quite serious. What is more serious is blatant use of forged documents purportedly issued by Government officers Those documents were used in making application before the Government officers. In this view of the matter, it is absolutely necessary that custodial interrogation is carried out. Though the applicant No.1 today is 76 years of age, still his custodial interrogation would be necessary. It is expected that the investigating agency shall have due regard to his age and health. But having said that, I reiterate that custodial interrogation of this applicant and other two applicants is necessary to find out source of these documents, modus operandi in using these documents and to find out other persons involved in this entire transaction. In this view of the matter, no case for grant of relief to any of the applicants is made out.

13. The applications are rejected.

14. With disposal of these applications, the interim applications do not survive and they are disposed of accordingly.

(SARANG V. KOTWAL, J.)