

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

**ANTICIPATORY BAIL APPLICATION NO.648 OF 2022
WITH
INTERIM APPLICATION NO.912 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.648 OF 2022**

1. Anil Kamlesh Singh
2. Kamlesh Triveni Singh

...Applicants

Versus

The State of Maharashtra

...Respondent

....

Mr. Hrishikesh Mundargi i/b. Ms Pravada Raut for the Applicants.

Ms Rutuja Ambekar, APP for Respondent -State.

Mr. A.R. Gole for the Applicant in IA/912/2022.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 16th MARCH, 2022.

P.C.:-

1. By this application filed under Section 438 of the Cr.P.C. the Applicants have sought pre-arrest bail in Crime No.I-6 of 2022 registered with Kashimira Police Station, Mumbai for offences punishable under Sections 420, 465, 467, 468, 471, 472 r/w. 34 of the IPC.

2. Mr. Hrishikesh Mundargi, learned counsel for the Applicants

states that the dispute is basically a civil dispute between the Applicants and the Complainant. He states that the Applicants have already filed a civil suit and that the Civil Court has allowed the application at Exhibit-5 and restrained the Complainant from alienating and creating third party rights. He further submits that the Complainant had already filed an application under Section 156 of the Cr.P.C. and that the Court had declined to refer the matter to investigation but has fixed the matter for verification. He states that after refusal to send the matter for investigation under Section 156(3) of the Cr.P.C, the Complainant has filed FIR on the basis of the same set of facts.

3. Ms Rutuja Ambekar, learned APP for the State and Mr. A.R. Gole, learned counsel for the Intervenor submit that the Applicants herein have entered into several sale transactions with other parties in respect of the property of the Complainant, even though they have no right, title or interest in the said property.

4. Learned counsel for the Intervenor submits that the Complainant had in fact lodged a complaint before the Kashimira Police Station. Since the agreements referred to by the Applicants were notarised, the notary was called for enquiry. The enquiry revealed that

the notary seal, stamp and signature were fabricated. Hence, the Notary-Mr. Yadavesh Chandra Dubey has lodged a complaint against Advocate Virendra Ramkrushna Mishra. He states that subsequently in view of the lockdown declared due to Covid outbreak, the Complainant had to go to his native place and when he returned he noticed that there was encroachment in the property, which insisted him filing of the FIR. He submits that the Applicants well played to grab the land and to cheat not only the owner but also the innocent purchasers.

5. Perused the records and considered the submissions advanced by learned counsel for the respective parties.

6. The records prima facie indicate that the Complainant is the owner of the land admeasuring 2100 sq. mts. under Survey No.169 Hissa No.1 and land admeasuring 4300 sq mts. under Survey No.170 Hissa No.10 situated at village Ghodbundar, District-Thane. The Complainant had initially entered into an agreement dated 08/05/2019 with the Applicant No.1 and one Sanjiv Kumar Singh agreeing to sell 10 gunthas of total land for sale consideration of Rs.50,00,000/-, out of which he had received sum of Rs.15,00,000/-. It is stated that the said agreement was cancelled since the Applicant No.1 had defaulted in paying the balance

amount.

7. On 19/02/2020 the Applicant No.1-Anil entered into another agreement with the Complainant agreeing to purchase 25 gunthas of land for total sale consideration of Rs.1,54,50,000/-. The Applicant No.1 paid total amount of Rs.40,50,000/- out of the total sale consideration and hence the said agreement came to be terminated.

8. By another agreement dated 22/11/2019 entered into with Rajiv Kumar Singh (accused No.1) the Complainant had agreed to sell 25 Gunthas for Rs.1,50,00,000/-. However, the accused No.1 did not pay the sale consideration and no sale deed was executed pursuant to the said agreement.

9. The records reveal that by agreement dated 31/07/2019 Rajeev Singh (accused No.1) and Kamlesh Singh (Applicant No.2 agreed to sell a portion of land admeasuring 200 sq.ft to one Sangita Bhau Kharpade. Accused No.1 and Applicant No.2 claimed to be the owners of the land even though the Complainant had not entered into any agreement with the Applicant No.2 at any point of time and further he had not entered into any agreement with Rajeev Singh (accused No.1)

prior to 09/08/2019. The accused No.1-Rajeev and the Applicant No.2-Kamlesh claiming to be the owners of 10 Guntha land entered into another agreement dated 09/08/2019 and agreed to sell 7 Gunthas of land to one Manish. By agreement dated 29/08/2019 the accused No.1 and Applicant No.2-Kamlesh agreed to sell 5 Gunthas of land to one Mahadev Chavan for Rs.65,00,000/-. Again on 10/09/2019 the accused No.1 and Applicant No.2 agreed to sell 5 Guntas of land to one Rajendra and Hansraj for Rs.62,00,000/-. On 25/09/2019 Sanjiv and Anil agreed to sell 10 Gunthas of land to one Munilal Yadav and by agreement dated 10/12/2019 accused No.1 Rajeev agreed to sell 4 Gunthas of land to one Mansing Chavan for Rs.52,00,000/-.

10. The records reveal that the Applicants and the other co-accused had no title over the land despite which they had agreed to sell small portions of the land to several purchasers by representing that they were the owners of the said land and have accepted a huge amount of consideration from the said purchasers. The records also prima facie indicate that the signature and seal of the notary on aforesaid agreements is forged and fabricated. In this regard the notary has already filed FIR No.302 of 2021 against the co-accused Virendra Mishra for preparing and using a bogus notary stamp and seal and for forging signature of the

notary.

11. The records indicate that pursuant to the MoU, the Applicant had paid to the Complainant sum of Rs.40,00,000/-. Though the Applicant No.1 has claimed to have paid Rs.78,00,000/- in cash, there is no prima facie material to substantiate the said contention. Furthermore, the Applicants and the other co-accused have not filed any civil suit for specific performance of agreement but have only filed suit for injunction simplicitor. The material on record thus prima facie reveals that the Applicant have in fact, agreed to sell the land belonging to the Complainant and have received huge amount from the purchasers even though they have no right, title or interest to the said land. The material on record thus shows involvement of the Applicant in commission of the offences, which are of serious nature and which need thorough investigation.

12. Under the circumstances, this not a case which would justify grant of pre-arrest bail. Hence, the application is dismissed.

13. In view of dismissal of the Anticipatory Bail Application, the Interim Application does not survive and hence stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)