

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

**ANTICIPATORY BAIL APPLICATION NO.1466 OF 2021
WITH
INTERIM APPLICATION NO.2360 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.1466 OF 2021**

Mahavir S/o Jayantilal Gandhi & Deepak s/w. Raosaheb Dhanvate Versus The State of Maharashtra	..Applicants ..Respondent
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**WITH
ANTICIPATORY BAIL APPLICATION NO.1157 OF 2021
WITH
INTERIM APPLICATION NO.2359 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.1157 OF 2021**

Vidula Ashish Phule Versus The State of Maharashtra	..Applicant ..Respondents
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**WITH
ANTICIPATORY BAIL APPLICATION NO.2990 OF 2021**

Pratap Bhabutmal Jain Versus State of Maharashtra & Anr.	..Applicant ..Respondents
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Mr. Nitin Gaware-Patil i/by Mr. Sanjay Kotkar for the Applicants in ABA/1466/2021.

Mr. Satyavrat Joshi for the applicant in ABA/1157/2021

Mr. Tejesh Dande i/by Rahul Abhyankar for the Applicant in ABA/2990/2021.

Mr. Surel Shah a/w. Mr. Amol B. Jagtap a/w Mr. Swapnil Ambure i/by Surel Shah, for the Intervenor in all Applications.

Ms. Veera Shinde, APP for the Respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATED : 19TH OCTOBER, 2022

P.C.:

1. All the applicants have invoked the remedy available u/s 438 of Cr.PC for grant of bail in Crime No. 32 of 2021 registered with Kothrud Police Station punishable u/s 420, 467, 468, 471, 472, 474 & 120B of IPC.
2. The case of the prosecution against accused/applicants is, land bearing survey nos. 113/1 and 113/2 situated at Mauje Kothrud, Sutardara, Taluka-Haveli, District-Pune admeasuring 36 acres and 37 gunthas was initially owned by Mahadev Datar and Yashwant Harshe who have transferred the said property in 1947 vide deed no. 1304 of 1947 to Seth Panchan Labdha Sawala and Maganbhai Iswarbhai Patel. After the death of Maganbhai Patel in 1951, mutation entry was carried out in the name of Shantaben Patel his widow. Vide registered sale deed no. 1414/1965 the aforesaid owners i.e. Sawala and Shantaben Patel transferred the said property in favour of Mohammed Shafi Shaikh. In 2013 the land owner Mohammed Shafi Shaikh expired and as such Yasmin, widow of Mohammed Shaikh, Shahnawaj Shaikh and Mujjamil Shaikh who were heirs became owners of the said property.

3. Out of the aforesaid, complainants/owners notice following illegal transactions.
4. Accused Vidula Phule has forged a document dated 12/02/1985 viz. will executed by deceased Shantaben Patel and shown to have received 12 acres land out of the aforesaid property and got her name mutated.
5. Co-ccused Pratap Jain claimed that deceased Shantaben Patel was his paternal aunt. He claimed that Shantaben Patel expired on 24/11/1987, Panchanji Labdha Sawala expired on 19/10/1969 and his paternal uncle Maganbhai, husband of Shantaben allegedly expired on 03/05/1951. Based on the above theory, he has secured legal heirship certificate vide order dated 06/08/2010 from the City Civil Court, Shivajinagar, Pune and tried to get his name mutated against the aforesaid property.
6. Accused-Ashok Patel allegedly sold the land to the extent of 7 acres and 20 guntha for consideration of Rs.5.00Cr to co-accused Mahavir Gandhi & Deepak Dhanvate. Accused-Ashok Patel with the help of notarized power of attorney dated 09/02/1987 executed by Shantaben and further executed sale deed and tried to get his name mutated on record.
7. Aforesaid case of the prosecution could be noticed from the

aforesaid narration as reflected in an order of the Magistrate passed u/s 156(3) of the CrPC at the behest of complainants i.e. legal heirs of Mohammed Shafi Shaikh.

8. Common submissions of all the applicants are, that the applicants are innocent and falsely implicated in the offence in question. The applicants have deep roots in the society as they hold immovable properties and that being so, they are very much available to the investigating agency. It is also urged that the civil dispute is given colour of an offence that too when civil disputes *inter se* between the complainant and applicants are pending adjudication before the Civil Court. It is also urged that delay caused in registration of the offence sufficiently pin points the presumption of the innocence of the applicants.

9. While opposing the prayer for grant of pre-arrest bail learned APP would urge that there is enough evidence in the form of documents to prima facie connect the applicants to the serious offence of cheating and forgery. It is claimed that the accused persons have hatched criminal conspiracy and committed the offence of grabbing the valuable property (worth more than Rs.200Cr.)

10. As far as accused-Mahavir Gandhi and accused-Deepak

Dhanvate in ABA/1466/2021 are concerned, the said accused persons by taking undue advantage of the absence of the mutation entry in the name of the complainant allegedly prepared have forged Will of deceased-Shantaben. Based on the same, the accused acquired 7 acres and 20 gunthas of land by practicing fraud with the help of Co-accused Ashok Patel .

11. The said accused persons are specifically named in the FIR. The said applicant persons have conspired to commit an offence alongwith accused Ashok Patel and has forged document viz. Power of Attorney, notarized sale deed, registered sale deed. Based on the forged document viz. Will, it was shown 7 acres and 20 gunthas land which has gone to the share of Ashok Patel, was purchased by them that too at a nominal consideration. The modus adopted by accused persons justify the case of prosecution for their custodial interrogation. Investigation carried out till this date sufficiently depicts their involvement in the serious offence of forgery. The fact remains that in the Misc. Application No. 78 of 2018, Civil Court has already recorded finding that the Will is not genuine. As such, the claim put forth by these applicants that they are the bonafide purchaser, cannot be prima facie inferred as the applicants are beneficiaries of the purchase of land based on the

forged documents that too for a meagre consideration.

12. There is one more facet to the matter viz. the notarized document which is shown to have been made in 1987 in relation to the land in question viz. Survey Nos. 113/1 and 113/2, in 1987 when Will was notarized the said survey nos. 113/1 and 113/2 were not in existence as the said survey numbers came in existence in 1996 by order of revenue authority i.e. sub-divisional officer.

13. In the investigation it was also found that there is no person by name of Ashok Patel. However, one Subramaniam Naidu impersonated himself as Ashok Patel. The applicants remained in touch with the said main accused since 2016. The probate proceedings taken out by co-accused Ashok Patel being 78 of 2018 on the file of Civil Court, Shivaji Nagar, Pune before which the applicants/accused got transferred the said land in their favour by execution of sale deed. The market cost of the said land appears to be around Rs.100 Crs, which the applicants shown to have purchased at meagre cost of Rs.5.00 Crs.

14. As far as accused Vidula Phule in ABA/1157/2021 is concerned, she claims to be the beneficiary under the Will Deed executed by deceased Shantaben Patel on 12/02/1985 and

another Will dated 24/05/1987 which is in Gujrathi. She allegedly submitted incorrect Marathi translation of the said will based on which obtained probate. In the said proceedings she had claimed to have succeeded to the extent of rights in land admeasuring 12 acres out of the aforesaid property. Though in the Will deed the land referred to was 7 acres 20 gunthas, the said accused got her name mutated against 12 acres of land.

15. The doctor's certificate which is annexed with the said will deed when investigated was found to be bogus as is stated by the issuing doctor namely Dr. Bhalchandra Dixit.

16. The execution of will was duly investigated and it was noticed that the present applicant / accused prima facie appears to have forged the said will.

17. As regards, accused-Pratap Jain in ABA/2990/2021 is concerned, the said accused allegedly claimed to be the legal heirs of the deceased- Shantaben and Panchanji Sawala both. Based on the alleged will executed by the said persons, the said accused has applied for issuance of the succession certificate, tampered with the Court order dated 06/08/2010 and got issued heirship in relation to the land bearing survey no. 113. In the matter of tampering / forgery of the Court order, the investigation

reveals that the applicant who is the direct beneficiary has forged the records / order of the Court. Based on the aforesaid forged order, the applicant has tried to grabbed the property. However, the investigation has revealed that he has no relationship to the deceased Shantaben or Panchanji Patel.

18. These accused having notice that the property is not muted in the name of original owners, by taking advantage of the same forged the documents and not only used the same in the Court's proceedings but also tried to grab immovable property. All theses accused persons appeared to have made themselves prima facie liable for offence of cheating, forgery of the records of Court of Justice, forgery for the purpose of cheating, using such documents to be genuine knowing them to be forged. Each of the applicants herein hatched criminal conspiracy with co-accused persons and appears to be prima facie involved in the offence.

19. As such, complexity of each of the applicants in involvement in serious offence which is punishable for more than seven years can be inferred. The accused have got to the case of forging the Court records / order so as to draw undeserving benefits.

20. Even if the accused are available for investigation, however there is enough material to infer that their custodial interrogation

as is claimed by learned APP is warranted so as to have detailed investigation in the matter.

21. That being so, no case of bail is made out. The anticipatory bail applications stands rejected. In view of the rejection of the anticipatory bail applications, interim applications also stands disposed of.

22. As ad-interim protection is in operation for more than one year, same is extended by six weeks as prayed.

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(NITIN W. SAMBRE, J.)