

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
ANTICIPATORY BAIL APPLICATION NO.2420 OF 2022  
ALONGWITH  
INTERIM APPLICATION(ST) NO.15168 OF 2022  
IN  
ANTICIPATORY BAIL APPLICATION NO.2420 OF 2022**

|                      |   |    |            |
|----------------------|---|----|------------|
| Kuldip Singh Soni    | ] | .. | Applicant  |
| vs.                  |   |    |            |
| State of Maharashtra | ] | .. | Respondent |

Smt.Pushpa Ganediwala a/w Shyam Panchmukh and Ankit Dhindale  
for the Applicant.

Mr.S.V. Ganand, APP for the State.

Ms.Swati Sagvekar, for the Intervenor.

PI A.M. Desai, Vasai Police Station present.

**CORAM : BHARATI DANGRE, J**

**DATE : 8<sup>th</sup> SEPTEMBER, 2022.**

**P.C.**

1] Heard learned counsel for the parties.

2] The applicant faces accusation in CR No.0407/2021 registered with Vasai Police Station which invoke offence under Section 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code. The subject CR has arraigned six persons as accused and the present Applicant is arraigned as accused No.4.

3] The complainant one, Dwarkanath Tiwari in his longish complaint has stated that his father Ramlal Tiwari was resident of Virar

since 1927 and he owned distinct parcels of land in the said area. In the said complaint, complainant is claiming that he is the only legal heir of his father who expired on 22.10.1978. He specifically state that the property in Survey No. 376 Hissa No. 1 which was given out, on rent to his father for cultivation by letter from the collector on 17.4.1976 is before that his father was cultivating Paddy in said land and he was paying rent. It was mutated in the name of his father initially as owner/occupier and in the revenue record after the death of his father, his name was recorded as per Rule 22 of the Maharashtra Land Revenue Code.

He specifically state that, the after demise of his father, he continued with cultivation in the area containing Survey No.376 Hissa No. 1 and it continued to yield income to him.

4] In the year 2011 some notice was published in the newspaper in respect of Survey No.376 Hissa No.1, by one Dwarikanath Ramlal Tiwari claiming to be the owner of the said land. He objected the said notice through his counsel.

In the year 2013 Dwarikanath Tiwari, resident of Kunda, Belodi, Varanasi, Uttar Pradesh had lodged a false complaint against him and statement of the complainant came to be recorded, pursuant to the enquiry initiated. This attempt once again repeated in the year 2014 and this was responded to by the complainant.

5] The complainant lodged a complaint with Virar Police Station in the year 2016 for initiating appropriate action. Once again he found notice published in the local newspaper on 27.06.2018, which was responded to, through his counsel and he also requested for initiation of action, against the counsel, who had issued the notice. When in month of February 2021, he visited Talathi Office in Virar, it was revealed to him that a document was executed on 31.12.2020, in the form of Sale Deed with Shrihari Vishnu Builders through his partner one Vilasrao Bhavar by Shri Dwarikanath, Accused No.1, as owner of the said land. When he obtained copy of the Sale Deed he noticed that

there is mention of Dwarikanath Tiwar, aged 70 years, resident of Village Kundakala, District-Chandoli, Uttar Pradesh as Vendor. The consideration of the said land was shown as Rs.45,83,3300/- with stamp duty being levied and determined under Section 31 of the Maharashtra Stamp Act.

The complainant allege that taking benefit of the similarity in his name, entire conspiracy has been hatched by the accused persons and he requested for taking appropriate action.

6] Learned counsel for the Applicant, Ms.Ganediwala would vehemently submit that as far as Applicant is concerned, he is merely a attesting witness. Copy of the Sale Deed alleged to have been executed on the basis of similarity in name is placed on record by the Intervenor alongwith the application. The vendor is described as Dwarikaprasad Tiwari and purchaser is Shrihari Vishnu Builders through partner Vilasrao Raghunath Bhavar and the property which has been offered for sale is Survey No.376 Hissa No.1, total area admeasuring 4.25.93 H. The Applicant has signed on this document as attesting witness.

7] Though the learned counsel for the Applicant made a serious attempt to invite my attention to documents of title, Power of Attorney executed by him, I have refrained myself from looking into the said document, due to limited role attributed to the Applicant and on the basis of which, relief is claimed that since he was known to POA, Sandeepkumar Yadav, who is from Durg, he has signed the document as attesting witness.

Apart from this, her submission is that allegation of fraudulent Power of Attorney which was executed in favour of Sandeepkumar Yadav signed by him, is also on similar ground, therefore, I have not permitted her to place on record the said documents which would take the case of accused Nos.1 and 2 further, but surely not of the present applicant.

8] The learned A.P.P. Mr.Gavand and the learned counsel for the complainant has invited my attention to the two documents, which would clearly reveal that the role attributed to the applicant is not merely of an attesting witness, but he played significant role in the entire episode. The Deed of Conveyance executed by the alleged vendor Dwarikanath Tiwari with Shrihari Vishnu Builders in respect of the agricultural land bearing Survey No.376 Hissa No.1 is executed by Dwarikanath Tiwari through his registered power of attorney holder Sandeepkumar Yadav, accused No.2, resident of Durg as 'Vendor' and Shri Hari Vishnu Builders referred to as 'Purchaser' with a recital that Ramlal Ramjas Tiwari expired on 22.10.1978 leaving behind his wife and son Dwarikanath and daughters and at present, he is the sole and absolute owner of the property and, hence, competent to deal with it. The said Deed of Conveyance executed on 31.12.2020 is signed by the present applicant as a witness.

Pertinent to note that prior to this document being executed, the applicant has responded to the notice/objection raised by the complainant and it is not the claim of the applicant that he is the owner of the land or he had any interest in the subject land, but his case is, he signed the document as a witness as he was knowing accused No.2 Sandeepkumar.

Apart from this, immediately after the execution of the Deed of Conveyance, special power of attorney is executed by Shrihari Vishnu Builders in favour of the present applicant on 21.01.2022 permitting him to deal with the land purchased by Shrihari Vishnu Builders i.e. Survey No.376 Hissa No.1 and authority is given to him to represent him in the proceedings whatsoever would be filed and he is also authorised to represent the Builder before the Revenue Authorities.

These two circumstances reflect that the applicant has more involvement in the alleged fraudulent execution of the Conveyance Deed by accused No.1 by taking advantage of similarity in the name and this require his presence in custody.

9] The learned APP would submit that apart from this when the Investigating Officer attempted frantic search for person Dwarikanath Tiwari on the address described on the Adhaar Card, it is revealed that no such person reside on the said address.

The learned APP would also submit that when the notices issued to Sandeepkumar Yadav, POA of Dwarikanath, on the address of Chhatisgadh, they returned back with the noting "not found".

10] The learned APP has further invited my attention to the receipt that has been placed at the end of the conveyance Deed, having acknowledged receipt of the entire purchase price of the land, being Rs.5 Crores through various cheques. Barring two cheques, other cheques are drawn on State Bank of India Account and the Investigating Officer has collected the details of the account in Durg main branch which was opened for a limited period on 04.02.2021 i.e. immediately presiding the alleged six transactions and account came to be closed on 05.06.2021. These account details do not reveal that the cheques which have been mentioned in the receipt are cleared through the said account. This is one more factor which makes the entire transaction doubtful.

11] In the wake of above, custodial interrogation of the Applicant, who *prima facie* is seen to be equally involved in the transaction and plays a role higher than the witness to execution of the said document as an attesting witness, is very much necessary.

Hence, Application is rejected.

In view of the disposal of the application, interim application does not survive and stands disposed off.

**[BHARATI DANGRE, J]**