

Santosh

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

ANTICIPATORY BAIL APPLICATION NO. 2544 OF 2021

Popat Pandurang Shitkal ...Applicant
Versus
State of Maharashtra ...Respondent

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Mr. Mahendra Kawchale, a/w Ruchira Karve, for the
Applicant.

Mrs. M. R. Tidke, APP for the State.

Mr. Shrihari Bahirat, Khadak Police Station, Pune City,
present.

CORAM: N. J. JAMADAR, J.

DATED : 13th July, 2022

ORDER:-

1. This is an application for pre-arrest bail in connection with CR No.340/2021, registered with Khadak Police Station, Pune City, for the offences punishable under Sections 420, 465, 467 and 471 of the Indian Penal Code, 1860 ("the Penal Code") .

2. The applicant claims, the ancestral properties of the applicant, i.e. the land being Survey No.62 at Hadapsar, were allotted on annual lease basis (*ek sali*). They were cultivating the subject land since 1943. In the year 1970, the annual lease came to be terminated. The applicant, however, asserts that the

applicant and his family members initiated proceedings to establish their proprietary rights over the suit land.

3. On 5th April, 2021, an application was received in the office of Tahsildar, Haveli, Pune, to mutate the names of the applicant and other seven persons to the subject land, bearing Survey No.62 admeasuring 7H 68 Are, as owners thereof pursuant to an order purported to be passed by the Minister (Revenue) in the proceedings No.530/2414/WPN/5768/2014, PR No.16/J-5, dated 31st January, 2018. The said application along with other documents including the order purported to be passed by the Minister was received through post. Subsequently, on 10th June, 2021, a certified copy of the said order and record of right of the subject land and other documents were submitted.

4. Eventually, it transpired that the said order furnished by the applicant was forged and fabricated. In fact, by the original order passed by the Minister on 31st January, 2018 in proceedings No.S-30/3414/WP No.5768/14/PR No.16/J-5, the application preferred by the applicant and his family members for allotment of the subject land for agricultural purposes came to be rejected. In the allegedly fabricated order, purported to be passed by the Minister in the said proceedings, the said application was allowed

and it was directed that the applicant no.1 therein to be allotted 9 Acre 29 Guntha land and applicant no.2 9 Acre and 10 Guntha land, on ownership basis.

5. Thereupon the first informant Trupti Kolte, the incumbent Tahsildar lodged the FIR.

6. Apprehending arrest, the applicant preferred an application for pre-arrest bail before the learned Sessions Judge. By an order dated 5th December, 2021, the learned Additional Sessions Judge, Pune, was persuaded to reject the application.

7. On 29th October, 2021, this application was listed before this Court. Interim protection from arrest was granted by this Court.

8. I have heard Mr. Kavchale, the learned Counsel for the applicant, and Mrs. Tidke, the learned APP for the State. I have also perused investigation papers.

9. Mr. Kavchale, the learned Counsel for the applicant, submitted that the applicant had no reason to submit an application to mutate his name to the subject land by forging the order passed by the Minister (Revenue) when the applicant had already assailed the order passed by the Minister rejecting

the application in a writ petition. The applicant has been falsely roped in at the instance of the persons, who have vested interest in the subject premises. As the original order and the allegedly forged order have been seized by the police, at this stage custodial interrogation of the applicant is not warranted. Hence, the applicant deserves pre-arrest bail.

10. The learned APP countered the submissions on behalf of the applicant. Inviting the attention of the Court to the allegation in the First Information Report (FIR) and the nature of the fraud sought to be practiced on the revenue authorities, the learned APP submitted that the application does not deserve to be entertained.

11. I have perused the original order passed by the Minister on 31st January, 2018, whereby the application of the applicant and other claimants to allot the subject land for agricultural purposes came to be rejected opining that the subject land was in possession of the forest department and it was indeed a forest and, conversely, the applicant was not in possession of the subject land. In contrast, the allegedly forged order purports to allot a portion of the subject land to applicant no.1 Dagdu Chavan and applicant no.2; the legal representatives of Kondiba Shitkal, including the applicant herein.

12. Mr. Kavchale, the learned Counsel for the applicant, in the face of the aforesaid material, attempted to wriggle out of the situation by canvassing a submission that since the applicant had assailed the order passed by the Minister, Revenue, dated 31st January, 2018, there was no occasion for the applicant to prefer the application for mutation. It was submitted that the said application was received by post. The authorship thereof could not have been, therefore, attributed to the applicant.

13. I am afraid, the aforesaid submission loses sight of the specific allegations in the FIR. Trupti Kolte, the Tahsildar, has categorically asserted that the applicant approached her and tendered the certified copies of the allegedly forged order. She inquired with the applicant as to why the said application was not filed till 2021 when the order was passed by the Minister on 31st January, 2018. The applicant attempted to explain the delay by ascribing the reason of pandemic and the pendency of the proceedings in the High Court. The applicant thereafter deposited the amount of royalty by challan. Thus, the endeavour of the applicant to distance himself from the said proceedings does not merit countenance.

14. Mr. Kavchale banked upon an affidavit which was sworn by the applicant on 21st June, 2021, wherein according to Mr.

Kavchale, the applicant was made to confirm that he would abide by the decision in the pending proceedings. This submission does more harm than good to the cause of the applicant. It implies that the applicant had approached the authorities to mutate his name to the subject land. If it was the applicant's stand that he was aware of the rejection of the application by the Minister (Revenue) and had assailed the said order before this Court, in a writ petition, there was no reason for the applicant to swear an affidavit in support of an application to mutate the names to the subject land, when the said prayer was expressly negated.

15. The situation which thus obtains is that there is strong *prima facie* material to show the complicity of the applicant. The fraud is of egregious nature. Authorities were sought to be deceived into believing that an order was passed in favour of the applicant and other claimants though the application was rejected by the Minister (Revenue). Custodial interrogation is indispensable to unearth the fraud in all its facets and unmask the identity of the persons, who were privy to the said fraud.

16. Resultantly, I am not inclined to entertain the prayer for pre-arrest bail.

17. Hence, the following order:

: O R D E R :

- (i) The application stands rejected.
- (ii) The order of interim protection stands vacated.

[N. J. JAMADAR, J.]