

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

ANTICIPATORY BAIL APPLICATION NO. 2824 OF 2021

Sanjay Mishrimal Punamiya ... Applicant

Versus

The State of Maharashtra ... Respondents

Mr. Rizwan Merchant a/w Dilip Shukla i/b Mahalakshmi
Ganapathy, for the Applicant.

Smt. Anamika Malhotra, APP, for the State-Respondent.

Mr. Sanjeev Kadam a/w V. S. Kapse i/b Anoushka Goyal, for the
Intervener.

CORAM : V. G. BISHT, J.

**RESERVED ON : 20th DECEMBER, 2021.
PRONOUNCED ON : 28th JANUARY, 2022.**

PC:

The applicant is seeking Anticipatory Bail in connection with C.R.
No. 1137 of 2021 registered with Sinnar Police Station, District- Nashik
for the offences punishable under Sections 420, 465, 468, 471 of the
Indian Penal Code and Section 82 of the Indian Registration Act.

2 There are two sets of the allegations in the First Information Report (FIR) filed by Mr. Pramod Lakshman Vaman (Sub-Registrar, Class-I) of Sinner Sub-Registrar Office, Sinner, District- Nashik. The informant filed said complaint on the basis of complaint bearing Inward No. 257 of 2021 dated 01/10/2021 received by him along with copy of the documents bearing No. 3025 of 2007 and 6495 of 2007. After verifying the record, it is firstly alleged that at the time of registration of agreement dated 26/06/2007 (document No. 3025 of 2007) with respect to Survey No. 310, the applicant had annexed a forged 7/12 extract in Uttan, Bhayndar, Thane which showed him as an agriculturist. Similarly, it is secondly alleged that at the time of registration of agreement dated 19/12/2007 (document No. 6495 of 2007) with respect of Survey No.477, the applicant used forged 7/12 extract. Thus, the applicant had forged the 7/12 extract in respect of Gat No. 203/24 situate at mouje Uttan, District-Thane and showed him as an agriculturist and thereby purchased the land of mouje Dharanmap, Taluka-Sinner, District- Nashik and thus, cheated on the Government.

3 Mr.Rizwan Merchant, learned Counsel for the applicant,

submits that similar FIR No.I- 184 of 2016 was filed on 26/09/2016 by one Shyamsundar Radheshyam Agrawal in respect of the said land. However, after conducting enquiry into the matter, the respondents filed a “B” summary report in respect of the FIR. Even the FIR later on quashed by this Court with the consent of said Agrawal. Despite this the intervenor after a delay of 14 years again moved before the Revenue Authority apart from filing other two FIRs on the similar lines. According to learned Counsel, the present FIR is directly in contradiction to the dictum laid down in **T.T. Antony vs State of Kerala and Anr.**¹ and **Babubhai vs State of Gujarat and Ors.**²

4 Besides, according to learned Counsel, the case is based on documentary evidence. The Investigating Officer is in possession of necessary documents and on this ground also there is no necessity of custody of applicant. Therefore, ad-interim protection granted by this Court needs to be confirmed, urged learned Counsel.

5 Smt. Anamika Malhotra, learned APP, on the other hand,

¹ (2001)6 Supreme Court Cases 181

² (2010) 12 Supreme Court Cases 254

vehemently submits that all other FIRs came to be filed in different contexts. As far as the present FIR is concerned, the same is filed by the Officer of the Sub-Registrar Office in respect of forged 7/12 extracts used by the applicant showing himself to be an agriculturist and while purchasing the lands, which he was not entitled to inasmuch as the applicant was not an agriculturist at the relevant time. The learned APP also invited my attention to the observations made by the learned trial Court while rejecting the bail application. In this factual situation, the ratio laid down in the decisions shall not be applicable. Having regard to the nature of offence, custody of the applicant is warranted and thus, there being no merit in the application, the same is liable to be rejected, argued learned APP.

6 Mr. Sanjeev Kadam, learned Counsel for intervenor, has supported the submissions of learned APP and also filed contents of various FIRs and pointed out that these FIRs vis-a-vis each other cannot be said to be identical. Since the serious offence of forgery has been committed by the applicant, there is necessity of custody of applicant. The application is devoid of merits and needs to be

rejected.

7 I have heard at length learned Counsel and learned APP for the parties. I have also gone through the material on record.

8 Certain admitted facts first. Shyamsundar Radheshyam Agrawal had lodged an FIR No. I-184 of 2016 on 26/09/2016 with Sinner Police Station against the applicant herein. It is pertinent to note from the contents of FIR that at the relevant time applicant was partner of Shyamsundar Radheshyam Agrawal and had entered into a transaction in respect of certain agricultural lands viz. Survey No. 477A, Hissa No. 1/1, 1/2, 1/3, 1/4 of village Mirgaon and another Survey No. 246 of village Pathare with one Kailash Kshatriya, Power of Attorney holder, of original owner viz. Diliprao Tidake and others. Later on, when Shyamsunder Radheshyam Agrawal became suspicious and after verifying 7/12 extracts, he found those lands were in the name of applicant and his son. He further made an enquiry and found that similarly the applicant had entered into transaction of Gat No.310 of mouje Dharangaon and Survey No. 203 on the basis of being agriculturist.

This in itself goes to show that at the relevant time Shyamsunder Radheshyam Agrawal was very much aware that though the applicant was not agriculturist, he became the owner of Gut No. 310 only on the basis of agriculturist.

9 It is also pertinent to note here that in the meantime the applicant herein also approached this Court for quashing above-said FIR bearing No. I-184 of 2016. Since the dispute was amicably settled between the parties, namely, Shyamsunder Radheshyam Agrawal and present applicant, the FIR was quashed on 19/07/2017. It appears from the record that the matter did not rest there. Three successive FIRs found its way to concerned police station including the present one. Two of them broadly reiterates the contents of first FIR i.e. FIR No.I-184-2016. I have gone through the FIRs bearing Nos. 176 of 2021 and 299 of 2021, the details of which are given by learned Counsel for intervenor.

10 As far as FIR No. 176 of 2021 is concerned, there is some reference to the land bearing Survey No.477A, Hissa No. 1/1, 1/2, 1/3, 1/4 situate at Sinner, District-Nashik i.e. the subject matter of

FIR No. I-184 of 2016. As far as FIR No. 299 of 2021 is concerned, that is largely on some other grounds.

11 It appears from the accusations made in the present FIR that Sharad Agrawal, nephew of Shyamsunder Radheshyam Agrawal, made a complaint to Sub-Registrar, Nashik dated 01/10/2021 with respect to same lands which formed part of FIR No. I-184 of 2016 alleging that the applicant, though was not an agriculturist, falsely showed himself to be so 7/12 extract record of village Uttan and on the basis of same purchased lands mentioned in the FIR. It is quite apt and apposite to note here that complainant conveniently suppressed the lodging of earlier FIRs, particularly, FIR No.I-184 of 2016 and FIR No. 176 of 2021.

12 Sub-Registrar on his part lodged FIR in question. Disturbingly enough this was done after 14 years of transactions of lands.

13 I have carefully and minutely gone through the present FIR i.e. FIR No. 1137 of 2021. At the cost of repetition, I do not find

any difference between the present one and the FIR which was quashed by this Court. Much emphasis in the present FIR is given about using of forged 7/12 extract by the applicant showing himself to be an agriculturist, which he was not, while purchasing the lands. Essentially this was also one of the aspect of earlier two FIRs.

14 Prima-facie the attempt on the part of complaint emanates and emerge from the earlier FIRs including the one which is quashed. This deliberate effort is in oblivion and complete violation of ratio laid down in the case of **T.T. Antony (Supra)** and **Babubhai (Supra)** as it contains the same allegation made in the said first FIR No. I-184 of 2016. I say so because by no stretch of imagination, it can be presumed that while lodging of FIR No. I-184 of 2016 Shyamsunder Radheshyam Agrawal was not knowing and for that matter the applicant, who is none other than the nephew of the former, that the applicant was not an agriculturist. Thus, by filing of present FIR, Shyamsunder Radheshyam Agrawal through his nephew has taken an indirect route which is not permissible in view of the dictum propounded in

the said decisions, to prosecute the applicant again.

15 Let me see from another angle, keeping aside the background of earlier FIRs. All that is alleged is the use of a forged 7/12 extract presenting applicant to be an agriculturist, which he was not. It is all about documentary evidence, which the informant is in possession of. For this purpose, custodial interrogation is not inevitable, however, for the purpose of smooth investigation the applicant can be directed to attend and co-operate in the investigation.

16 Having regard to the material on record, in my view, the applicant has made out a case for anticipatory bail. Hence, the following order.

ORDER

(i) In the event of arrest of the applicant - Sanjay Mishrimal Punamiya in C.R. No. 1137 of 2021 registered with Sinnar Police Station, District- Nashik for the offences punishable under Sections 420, 465, 468, 471 of the Indian Penal Code and Section 82 of the Indian Registration Act, the applicant be enlarged on bail on his furnishing PR

& SB in the sum of Rs.1,00,000/- (Rs. One Lakh only) with one or more sureties.

(ii) The applicant shall attend the concerned police station on every Monday and Tuesday from 11-00 a.m. to 2-00 p.m. with effect from 1st February, 2022 for a period of three months.

(iii) The applicant shall not tamper with the prosecution evidence.

(iv) The observations made herein-above are prima-facie in its nature for the purpose of deciding the anticipatory bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(v) Parties and all concerned to act on authenticated copy of this order duly issued by Sheristedar of this Court.

(vi) The application is allowed in the aforesaid terms and stands disposed of accordingly.

REKHA
PRAKASH
PATIL

Digitally signed by
REKHA PRAKASH
PATIL
Date: 2022.01.28
16:18:51 +0530

(V. G. BISHT, J.)

Rekha Patil

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