

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

**ANTICIPATORY BAIL APPLICATION NO. 2823 OF 2022
WITH
INTERIM APPLICATION (ST) NO.17677 OF 2022**

Gorakh Vaman Katale ...Applicant

Versus

The State of Maharashtra ...Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2833 OF 2022
WITH
INTERIM APPLICATION (ST) NO. 17675 OF 2022**

Subhash Tulshiram Birari and Ors. ...Applicants

Versus

The State of Maharashtra ...Respondent

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Mr. Niranjan Mundargi i/by Mr. Advait U. Shukla, Advocate for Applicant No.1 to 4 in ABA/2833 of 2022.

Mr. Amey Deshpande, Advocate for Applicant in ABA/2823/2022.

Mr. Virendra V. Pethe, Advocate for Applicant in IA(st)/17677/2022 and IA(st)/17675/2022.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 14th OCTOBER 2022

PC :

1. The applicants in both these applications are apprehending arrest in connection with C.R. No. 158 of 2022

registered with Sarkarwada Police Station, Nashik on 21st September 2022 for offences punishable under Sections 420, 465, 468, 471 read with 34 of the Indian Penal Code.

2. The case of the prosecution is that, the complainant had ancestral property bearing Survey No.226/1 having area of 5H 88R. The said property was partitioned as per the Government Rules, 1990 between the father of first informant and three brothers. As per partition, father retained the land at survey No. 226/1/1 having area 1H 21R. The first informant was provided land bearing survey No.226/1/2 having area of 1H 65R. His brother Ramesh Kalsakar received land bearing survey No.226/1/3 having area 1H 51R and the other brother Sanjay Kalaskar received land bearing survey No.226/1/4 having area of 1H 51R. The complainant's father sold land bearing area 81R out of area 1H 21R at survey No.226/1/1 to Tulshiram Birari and his three sons namely Subhash Birari, Prakash Birari and Satish Birari. Sale deed was executed and registered. In the sale deed it was stated that, the land is in no development zone and provision of ULC Act will not apply to the land and certificate in that regard has been issued by Municipal Corporation. The first informant's father had expired in 1993. On 22nd May 1995, Tulshiram Birari sold the property to his brother Madhukar Birari and his three sons Vijay Birari, Kailas Birari and Sanjay Birari by

notarized partition deed. On 2nd August 1995, Madhukar Birari had executed General Power of Attorney in favour of Mohan Metkar. Madhukar Birari, his three sons, Mohan Metkar and Mr. G. V. Katale created the lay out of the land at survey No.226/1/1 having area of 81R. The lay out was sent for approval on 22nd April 1996 to the Town Development Division of Nashik Municipal Corporation. The lay out was tentatively approved by Corporation on condition that, DP road and approached road from the said lands has to be handed over to the Corporation without consideration. The lay out was approved on 6th September 1996. On 27th August 1996, Subhash Birari and Sanjay Vyavhare purchased stamp papers of Rs.20 and executed consent deed. Yashvant Mate and Ramesh Talvare being owners of survey No.228 aggrieved to hand over part of their land towards the construction of 18 meters DP road. The sale deed was signed by Subhash Birari as witness. By way of application dated 13th September 1996, Madhukar Birari and his sons applied for 8,000/- square meter land out of 8,100 square meter land converted into non-agricultural purpose and got the approval from District Magistrate Nashik on 7th February 1997. In order to get lay out plan approved, Madhukar Birari and his three sons prepared the documents on stamp papers of Rs.20 and agreed that they would give 1128 square meter land out of survey No.226/1/2 belonging to

first informant to Nashik Municipal Corporation free of cost. It is alleged that, the said agreement bears forged signature of first informant. The said document bears signature of Assistant Director of Town Planning as party No.1 and for party No.2. It bears signature of power of attorney holder of late Madhukar Birari and his three sons along with forged signature of first informant. The agreement also bears signature of Subhash Birari as witness along with Santosh Vispute. On the basis of forged documents, the accused got their layout plan finally approved on 8th June 2004. The land of the complainant is towards southern-west at survey No.226 and the DP road is towards eastern side at survey No.226/1/1. While getting layout plan approved, the accused conspired with their power of attorney holder and architect and excluded 1128 square meter area of DP road 820.74 square meter area of colony road from their 81R plot and got their layout plan approved. The complainant had obtained writing expert opinion which reveals that his signature was forged. The first informant got the land measure through lands revenue record office and it was found that the land at survey No. 226/1/1 was in excess than its original area of 81R.

3. The applicants preferred an application for anticipatory bail before the Sessions Court. The said application was rejected vide order dated 6th October 2022.

4. Learned Advocate for the applicants submitted that the entire matter relates to document. Custodial interrogation of the applicants is not necessary. Dispute relates to property. The claim of complainant is false. The complainant is suppressed the vital facts. The FIR has been registered after a period of about 18 years. The first informant had filed complaint with Panchvati Police Station in the year 2020. The applicants were summoned and statement of applicant No.1 Subhash Birari was recorded by the police. The applicants had co-operated with the investigation agency. The documents are handed over to the police. Nothing remained to be recovered. Father of first informant had executed sale deed dated 17th January 1991 in favour of father of applicant No.1. Subhash Birari and his three sons including applicant No.1. The sale deed shows that the eastern boundary is attached to survey No.228 and existence of DP road and easementary road was not disclosed to the father of applicant. By way of sale deed dated 17th May 1995, property bearing survey No. 226/1/1 having area of 81R was given to uncle of applicant No.1. The applicant No.2 to 4 and their father were in possession of their property and they had executed power of attorney in favour of Mohan Metkar as they wanted to prepare the layout plan of the land. Mr. Metkar sought services of Gorakh Katale (applicant in ABA No. 2823/2022). He was architect by profession.

There existed 18 meter DP road and easementary road from survey land which was not disclosed to the applicants. It was agreed that, the applicants would be given an extra area by the first informant as against the error was not showing DP road and easemenatry road. On account of understanding, they did not executed any document. In form III Rule 5 of the ULC Act, the complainant had specified the land holdings. He had given details of vacant land and non-vacant land. The understanding between applicants and first informant regarding adjustment of DP road in their lay out plan was admitted by complainant. This is also evident from Order dated 20th September 1996 passed by competent Authority it was decided to enter into an agreement to hand over the DP road, colony road and open space to Corporation. Agreement was executed. Final lay out plan was approved by Corporation on 8th June 2004. There was another agreement with respect to land survey No.226/1/1 for remaining area of 40R with mother of first informant. It was agreed that the mother of first informant and her children including complainant would deliver possession of the land to applicant No.1 and he was permitted to have entry in that land and permitted to place his name board. The execution of sale deed was awaited. The complainant received the compensation. Suit was filed by applicant No.1 for specific performance before the Civil Court, Senior Division

at Nashik. Expedite judgment was passed in favour of applicant No.1 on 15th December 1997. The property was not handed over to applicant No.1 and execution application was filed. Learned advocate for applicant in Anticipatory Bail Application No. 2823 of 2022 submitted that, the applicant is architect by profession. He performed his duty by preparing plan as per document produced before him. He is not beneficiary to the transaction. His custodial interrogation is not necessary.

5. Learned Advocate for intervenor/complainant and learned APP submitted that custodial interrogation of the applicants is necessary. The accused were involved in forgery of document. The accused had acted in connivance with each other. The expert opinion sought by complainant supports the prosecution case. The signature of complainant was forged. All the accused have acted in connivance with each other. Tentative approved lay out plan was obtained in 1996. The applicants had purchased stamp of Rs. 20/- for executing consent letter on behalf of Uttam Mane and others. He could have obtained documentary evidence in mutual understanding.

6. The dispute relates to property. The FIR has been registered belatedly. There are claims and counter claims. The investigation relates to documents. Civil Court proceedings were initiated between parties. The FIR relates to old transaction.

Considering the nature of dispute, custodial interrogation of the applicants is not necessary. Hence, I pass the following Order.

ORDER

- (i) Anticipatory Bail Applications are allowed and disposed off;
- (ii) In the event of arrest of applicants in connection with C.R. No.158 of 2022 registered with Sarkarwada Police Station, Nashik the applicants shall be released on bail on executing PR bond in the sum of Rs.20,000/- each with one or more sureties in the like amount;
- (iii) The applicants shall appear before Investigating Officer on 19th, 20th and 21st October 2022 between 11 am and 1 pm and co-operate with investigation and thereafter as and when called for till filing of charge-sheet.
- (iv) The Investigating Officer can take specimen of handwriting of applicants, if necessary;
- (v) Both the Interim Applications are disposed off.

(PRAKASH D. NAIK, J.)