

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 506 OF 2023

**VIJAYKUMAR VISHWANATH KAPSE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. S. S. Manale, Advocate for the applicant
Mr. S. P. Sonpawale, APP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 07/06/2023

P.C. :-

1. Applicant apprehending arrest in connection with C.R. No. 163 of 2023 registered with M.I.D.C. Police Station, Dist. Latur for the offence punishable under Sections 417, 420, 465, 467, 468, 471, 447 read with Section 34 of the Indian Penal Code.

2. Dhanraj Nila filed report with M.I.D.C. police station stating that his mother Nirmalabai, his wife Suman and sister-in-law Savita have purchased plots in gut No. 76 of village Arvi, Tal. Latur in the year 1998 and since then they own said plots. The informant is authorized look after those plots but as he was required to stay away from Latur on account his employment, he could not take care of the same. After his retirement when he started the process for obtaining electricity connection on those plots, at that time it was revealed to

him that number of persons have made constructions on those plots. It is stated that those plots were purchased from Trivenibai Lagaskar who was owner of gut No. 76 to the extent of 1 H 22 R land and that she has made 68 plots in the said land. It is alleged that present applicant and others in collusion with each other have got prepared a private lay out and thereby the plots therein were sold. On these allegations offence is registered and applicant apprehends arrest.

3. Learned counsel for the applicant states that it is not a case that any bogus lay out is prepared by the applicant. According to him at the time of undertaking of consolidation scheme the authorities of Land Reforms Department had wrongly reduced area of original owner of gut No. 76 Balaji Gadade by 36 gunthas and hence appropriate proceeding were initiated before the Deputy Director of Land Record. In the said proceeding the father of Pandurang Gadade, executed special power of attorney in favour of the applicant for not only looking after the litigation but also for preparing lay out the plots and executing sale deed. It is further stated that in the meantime Limbaji who was the owner of 1 H 28 R land from gut No. 76 has sold the said land to one Latabai Jadhav who in turn sold it to Trivenibai and mutation entry No. 272 was recorded accordingly on 23/05/1998. Though the land sold admeasured 1 H 22 R, it was

wrongly recorded as 1 H 52 R. Thus, it is contention that on the basis of wrong mutation entry Trivenibai has claimed more area than she purchased and therefore whether the area sold on basis of power of attorney by applicant or by Trivenibai to informant and others is a matter of dispute to be resolved by the civil court, and in no case it can constitute an offence.

4. Learned APP opposed the said contention by stating that there are specific allegations against the present applicant that property belonging to the persons whose authority is held by the informant is sold and that for effective investigation custody of applicant is essential.

5. *Prima facie* perusal of the record indicates that applicant had received a registered power of attorney from the original owner of gut No. 76 to the extent of 36 R land. It further indicates that 1 H 22 R land from gut No. 76 was sold to Trivenibai but it is recorded to the extent of 1 H 52 R land in the revenue record. There is order of the Deputy Director of Land Record issuing correction to the said entry and showing land admeasuring 36 R in the name of the original owner Gadade. Apparently the transaction in question is not on the basis of forged documents but on the basis of the power of attorney

executed by the original owner in favour of the applicant. It is also clear from the lay out prepared by Trivenibai for the purpose of sale of the land indicates that the lay out is in respect of the land admeasuring 1 H 52 R where she was sold area of 1 H 22 R land only. It could be therefore subject matter of dispute before the Civil Court. *Prima facie* there is lack of evidence of any fabrication of document or deception of informant and owners of plots, in order to attract provisions of IPC against applicant. It is not in dispute that in this offence there is only documentary evidence and almost all documents connected with present applicant are registered one, which can be secured by Investigating Agency for concerned authorities. Thus, for the purpose of investigation custody of the applicant is not necessary. Appropriate direction to him to attend concerned police station would be sufficient for further effective investigation. Hence application is allowed on the same terms of order dated 11th April, 2023.

(R. M. JOSHI, J.)

ssp