

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

ANTICIPATORY BAIL APPLICATION NO.1021 OF 2023

SHANKAR S/O GYANOBA SHINGE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. S. R. Bagal h/f
Mr. B. N. Gadegaonkar
APP for Respondents: Mr. V. S. Badakh

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CORAM : R.M. JOSHI, J

DATE : SEPTEMBER 21, 2023

PER COURT :

1. Applicants apprehend arrest in connection with with C.R. No. 164 of 2019 registered with Shivajinagar Police Station, Dist. Nanded for the offences punishable under Sections 420, 464, 465, 467, 468, 469, 471, 34 of the Indian Penal Code.

2. First informant claims to be widow of owner of the property in question initially allotted by MHADA to her husband. It is alleged by the informant that present Applicants in collusion with Officers of MHADA created false and bogus document. Though she is alive it was declared that she is dead and on the basis of such false document, property was got transferred in

the name of Applicant – Shankar and which was in turn transferred to purchaser. On the basis of this report, crime came to be registered against Applicants and co-accused.

3. Learned Counsel for the Applicants submits that informant before approaching to the police had lodged complaint being OMCA No. 138/2018 before CJM, Nanded for seeking direction to be register crime and investigate into the same under Section 156(3) of Cr.P.C. It is submitted that the said application is rejected with observation that the dispute between the parties is civil in nature. The complaint was treated as regular criminal case and was put up for verification. It is contended that by suppressing these facts, informant has lodged FIR in question. By referring to the documents filed on record, it is contended that there is no dispute made about the fact that she had given thumb impression on the affidavit dated 25.01.1983. It is also submitted by referring to the complaint made before the Magistrate that admittedly possession of the property was handed over to the Applicants herein. Thus, it is his submission

that after lapse of number of years present dispute is sought to be made which is civil in nature and hence, pre-arrest bail is sought.

4. Learned APP opposed the application by referring to the document submitted by Applicants before MHADA stating that the informant and her husband are dead. It is also contended that informant has specifically denied the execution of the affidavit and, therefore, on the basis of false document Applicants herein have got the property in question transferred in their name and subsequently disposed of the same to the purchaser. It is, therefore, contended that the act of the co-accused in collusion with each other is in order to cheat and cause loss to the informant and hence, it is not case for grant of anticipatory bail.

5. Perusal of record indicates that competent Court has made observations with regard to the allegations made by the present informant stating that there is no dispute about the fact that informant had admitted signature/thumb impression over the document, i.e., affidavit consenting for transfer of the property in question in the name of Applicants. It is

specifically observed that considering all the facts *prima facie* the alleged dispute is civil in nature. With these observation, prayer for investigation into the crime under Section 156(3) came to be rejected.

6. It is submission of learned APP that even if it is accepted that FIR is recorded in suppression of said fact of filing application to Magistrate but there is evidence to indicate that false affidavit was filed by the Applicants showing informant as deceased and hence, pre-arrest bail cannot be granted. This fact cannot be considered in isolation to the affidavit executed in the year 1983. Moreover, perusal of the complaint lodged before the Magistrate indicates that the possession of the property was handed over the Applicants. Though, it is now sought to be contended by informant that it was given as care taker, however, affidavit executed in the year 1983 does not support the said contention. Pertinently for long period of time no claim is made by informant against the property in question. In any case, as to whether the informant had executed the said affidavit on her own accord or it was obtained by fraud or misrepresentation

would be matter to be decided at the time of trial. There is no dispute about the fact that in the instant case all the documents are with the office of MHADA and as such, nothing is to be recovered at the instance of present Applicants.

7. In such circumstances, there is no impediment in allowing application. Hence, application is allowed by confirming order dated 28th June, 2023.

(R.M. JOSHI, J.)

Malani