

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

ANTICIPATORY BAIL APPLICATION NO. 56 OF 2023

Javed Mobin Khan

Age : 45 Years, Occu. : Business,

R/o. : S.K.House, Fatherwadi,

Gokhivare, Vasai (E), Palghar.

...Applicant

vs.

The State of Maharashtra

[Through Senior Police Inspector,

Waliv Police Station]

...Respondent

**ALONG WITH
ANTICIPATORY BAIL APPLICATION NO. 74 OF 2023**

1. Hemal Bipin Parmar

Indian Inhabitant, Age : 33 Years,

Residing at : Chandrabhai Chawl,

Road – 03, Near Ambaji Temple,

Kasturba Road, Borivali (E),

Mumbai : 400 066.

2. Shweta Bipin Parmar

Indian Inhabitant, Age : 34 Years,

Residing at : C -1, Vishwas Nagar,

Ambadi Road, Vasai (W),

District : Palghar.

...Applicants

vs.

The State of Maharashtra
[Through Senior Police Inspector,
Waliv Police Station]

...Respondent

Mr.Uday P. Warunjikar a/w Mr.Jenish Jain and Ms.Sonali Chavan,
Advocates for Applicant in ABA No.56 of 2023.

Ms.Kusum Pandey a/w Ms.Pooja Nalawade i/b. Mr.J.S.Tiwari,
Advocates for Applicant in ABA No. 74 of 2023.

Mr.Sunil Paranjape a/w Mr.Omkar Paranjape a/w Mr.Anil D'Souza
and Mr.Valentine Mascarenhas and Mr.Ernest Tuscano, Advocates for
Intervenor.

Mr.H.J.Dedhia – APP for the Respondent - State.

CORAM : S. M. MODAK, J.

DATE : 15th MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicants, learned Advocate for the First-Informant and learned APP for the Respondent-State. Learned Advocate for the First-Informant sought liberty to intervene in the matter. It is objected by learned Advocate Shri.Warunjikar for the reason that no interim application is filed. Whereas, it is pointed

that on few of the earlier dates, there is appearance on behalf of the Intervenor. In view of that, oral request is accepted.

2. There is a land bearing Survey No. 253/A part 04 situate at Vasai, District : Palghar owned by one Bipin Gokuldas Parmar. He expired on 27th January, 2007. He executed an agreement for sale on 5th June, 2006 for a consideration of Rs.11,50,000/- in favour of one Vinod Patel. Present First-Informant is his son.

3. There are two registered sale-deeds. One is dated 24th March, 2021 in favour of the First-Informant. Whereas, second is dated 25th May, 2021 in favour of the Applicant Javed Khan in ABA No.56 of 2023. This second sale-deed dated 25th May, 2021 is disputed by the First-Informant. It was preceded by an agreement for sale dated 26th February, 2008. Even though, it bears the date of 26th February, 2008, it was executed later on and the earlier date was put, is the complaint of the First-Informant/prosecution.

4. The Applicants Hemal and Shweta are the heirs of the original owner – Bipin Parmar. The first sale-deed date is 24th March, 2021 in favour of the First-Informant was not executed personally by them. But, it was executed by their power of attorney holder Vinod Patel.

This power of attorney is the subject matter of challenge in Special Civil Suit No.183 of 2021 at the instance of Applicants Hemal and Shweta. They claimed that they have not executed that power of attorney. The power of attorney holder Vinod Patel on the basis of that power of attorney, executed a sale-deed in favour of his son the First-Informant on 24th March, 2021. This sale-deed is the subject matter of that Civil Suit.

5. The First-Informant who is a purchaser of the land contends that the land is muted in his name. Whereas, the Applicants Hemal and Shweta executed a sale-deed with Applicant Javed on 25th May, 2021. The grievances of the prosecution are as follows :--

- a. the stamp paper on which the agreement for sale was executed was in fact issued from the stamp vendor on 10th March, 2008 and as such, the agreement for sale cannot be executed on 26th February, 2008.
- b. There is one more instance which is quoted in order to buttress the submission that this agreement for sale was in fact executed at a later stage. The signatories as 'लिहून देणार', Hemal and Shweta. Said Shweta has not signed in her maiden

name but she has signed in her married name as Shweta Patra.

And she was not married in the year 2008.

- c. In the address column, both the parties to the agreement for sale has mentioned their address as district : Palghar. Whereas, in the year 2008, that district has not come into existence.

Learned APP also submitted that the Applicant Javed is having criminal antecedents and there are four cases registered against him and some of them are of similar nature. This fact is referred by the Court of Additional Sessions Judge in its order. That is why, learned APP submitted that custodial interrogation is required.

6. It is submitted by learned Advocate Shri.Warunjikar that in three of them, there is settlement and fourth offence is subject matter of challenge in a Writ Petition.

7. Learned Advocate in Application No.74 of 2023 submitted that the power of attorney dated 3rd October, 2008 was not executed by them and it is in fact, not registered. Whereas, learned Advocate for the First-Informant says that it was registered one. I have seen the sale-deed. It is dated 24th March, 2021 and the power of attorney is annexed with. It seems that the power of attorney is not registered

but it is a part of the registered sale-deed.

8. Learned Advocate for the First-Informant invited my attention to the execution part of that power of attorney wherein the photographs and signature of those two Applicants are annexed.

9. Learned Advocate for the First-Informant also submitted that even though the suit is filed, they have not been served. Learned Advocate for the two Applicants submitted that in fact, her clients were not paid the consideration. Learned Advocate Shri.Warunjikar submitted that in fact, there is a civil dispute and it is given a colour of criminal litigation.

10. Learned APP pointed out to me the correspondence made with the Bank in order to show that consideration has been paid to original owner and also these two Applicants when they executed power of attorney. The issue is whether the custodial interrogation is required.

11. In these Application, we are concerned with the authenticity of sale-deed dated 25th May, 2021 and an agreement for sale dated 26th February, 2008. Two Applicants may be having grievance about power of attorney dated 3rd October, 2008 and the sale-deed dated

24th March, 2021, they have filed complaints to the Police Station and also filed complaint under Section 156(3) of the Code of Criminal Procedure, 1973 [“Cr.PC.”]. However, this is not a subject matter before this Court.

12. Considering the instances quoted by the learned APP about the agreement for sale, at prima facie stage, it can be said that this agreement for sale even though executed on 26th February, 2008, there are certain suspicion about this agreement for sale. So, I think that custodial interrogation is required. Even though, this agreement for sale is seized by the Police, certain things cannot be unearthed unless the Applicants are interrogated custodially. So, I do not think that case for grant for anticipatory bail is made out.

13. Hence, both the Applications are rejected.

14. There is a request to continue the oral protection granted by this Court earlier. Learned APP could not confirm it. For three weeks’, interim protection is granted.

[S. M. MODAK, J.]