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

ANTICIPATORY BAIL APPLICATION NO.1185 OF 2020

Hemant Yeshwant Ashtekar & Anr. ... Applicants
V/s.
The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.116 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.1185 OF 2020**

Chandraprakash T. Tiwari ... Applicant
In the matter between
Hemant Yeshwant Ashtekar & Anr. ... Applicants
V/s.
The State of Maharashtra ... Respondent

Mr. Harshad V. Nimbalkar with Mr. Ashish Kachole &
Mr. Abhishek Arote with Mr. Sajid Mahat with Mr.
Omkar Chitale with Mr. Satyam H. Nimbalkar for the
applicants.

Ms. Pushpa Ganediwala with Mr. Chaitanya Purankar
i/by Ms. Purvi Shah for the applicant in IA/116/2021.

Mr. Pandurang H. Gaikwad, APP for the
respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 15, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.434 of 2020 registered at Chikhali Police Station, Pune for the offences punishable under sections 465, 468, 471, 447, 341 and 34 of the Indian Penal Code, 1860 read with section 7 of the Criminal Amendment Act, 1932.
2. According to prosecution, the informant derived title of Gat No.90 at village Talwade, Taluka Haveli, District Pune admeasuring 7.5 R on 6th November 1997. The said property was declared as red zone and, therefore, he cannot construct over the said property. The actual possession of the said property was with the informant till 7th November 2018. On that day, the applicants dispossessed the informant using unlawful force. He, therefore, lodged a complaint with police station concerned on 7th November 2018. The applicants illegally constructed a temporary shed and bore well in the said property.
3. According to the informant, this is a part of land grabbing which was pre-planned strategy of all the accused. According to him, all the accused persons forged sale deed by inserting boundaries of property owned by him with intention to grab land owned by him. Based on such forged sale deed, the applicants altered revenue records to make entries of their names in the revenue record. Therefore, according to the informant, the applicants along with other co-accused have committed offence under sections 465, 468, 471, 447, 341 and 34 of the Indian Penal Code, 1860 read with section 7 of the Criminal

Amendment Act, 1932.

4. The applicants who are purchasers of the property, filed an application before the learned Sessions Judge under section 438 of the Criminal Procedure Code, 1973, which came to be rejected by order dated 11th November 2020; hence, the applicants have filed present anticipatory bail application.

5. Learned advocate for the applicants states that the applicants are the bona fide purchasers of the property in dispute. The ready reckoner value of the property in dispute is Rs.26,27,690/-. Consideration agreed was Rs.45,40,000/-. The consideration was sought to be paid by the cheques, however, due to dispute with the informant, cheques around amount of Rs.13,19,000/- were honoured. Rest of the consideration was not paid to the vendors. According to him, except allegation that all the accused have forged the sale deed in question, there is no specific role attributed to the applicants as to how applicants participated in the offence of forgery. According to him, there is no material available with the investigation to attribute such role to the applicants. According to him, therefore, considering allegations in the report and material available in the investigation, essential ingredients of the offence alleged against the applicants are not fulfilled. In support of his submission, he relied on judgment in the case of **Md. Ibrahim & Ors. vs. State of Bihar & Anr.** reported in (2009) 8 SCC 751.

6. Per contra, learned advocate for the informant submitted that this is a classic case of land grabbing. The co-accused has criminal antecedents. The market value of the property was

astronomical but due to imposition of red zone, the value has been deteriorated. According to her, the applicants along with other co-accused made false documents by tampering with it and, therefore, essential ingredients of the offence alleged against the applicants are fulfilled.

7. Learned APP for the State supported the submissions of the informant and submitted that custodial interrogation of the applicants is necessary. Considering gravity and seriousness of allegation, the applicants are not entitled to any relief.

8. I have considered the material on record. Based on material on record, prima facie it appears that there is no specific role attributed to the applicants that as to how applicants tampered the sale deed. The allegations which find place in the report are to the effect that all the accused without lawful authority and dishonestly changed boundaries of the sale deed to grab the property of informant and based on such sale deed encroached on the property of the informant.

9. It is not in dispute that the applicants have filed a civil suit seeking permanent injunction against the informant restraining him from disturbing possession over the property in dispute. It is also not in dispute that the informant has filed suit under section 6 of the Specific Relief Act, 1963, wherein the Civil Court by way of interim relief has restrained the applicants from alienating the property in dispute. Prima facie, it appears that the applicants have parted with valuable consideration atleast to the extent of Rs.13,19,000/- by cheques. Therefore, at this stage the applicants

appear to be bona fide purchasers of the property. The Apex Court in the case of **Md. Ibrahim** (supra) carves out distinction between a person executing sale deed claiming the property conveyed to be his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorized by owner. The Apex Court further considered essential ingredients of section 464 of the Indian Penal Code, 1860 observing that a person can be said to have made false document if (i) he made or executed a document claiming to be someone else or authorized by someone else or altered or tampered the document or obtained a document by practicing deception.

10. In the facts of the present case, the allegation contained in the report is omnibus allegation that all the accused forged the sale deed. It is orally submitted that all accused persons tampered the document to insert boundaries of property owned by the informant. In absence of specific allegation that purchasers altered the document, at this stage no ingredients of the offence of making false document are prima facie held to be satisfied. At this stage, prima facie material on record indicates no role played by the purchasers to show insertion of boundaries by purchasers. At this stage it is not clear what was the original document and in what document the insertion of changing boundaries was made by the purchasers. All these issues are required to be considered by investigating agency.

11. At this stage, the investigation is complete. Charge sheet is filed. From the material on record, as of now I am prima facie satisfied that the ingredients of offence under sections 464, 468

and 471 are not made out against the purchasers. This Court by order dated 14th January 2021 protected the applicants. There is no material on record to indicate that the applicants have not cooperated with the investigation or have violated terms of interim order. On overall view of the matter, the interim order granted by this Court on 14th January 2021 deserves to be confirmed. Hence, the interim order dated 14th January 2021 is confirmed on the same conditions.

12. It is stated that the charge sheet is not filed against the present applicants. It will, therefore, be open for investigating agency to complete the investigation in accordance with law and the applicants shall cooperate with the investigation.

13. The anticipatory bail application stands disposed of.

14. In view of disposal of the anticipatory bail application, nothing remains to be adjudicated in the interim application. The same is disposed of.

(AMIT BORKAR, J.)