

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

ANTICIPATORY BAIL APPLICATION NO. 127 OF 2023

Shankar @ Ananta Dundu Lakhambare and Ors. ...Applicants

vs.

State of Maharashtra ...Respondent

**ALONG WITH
INTERIM APPLICATION NO. 800 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 127 OF 2023**

Laxman Ambo Pokala ...Intervenor

In the matter between

Shankar @ Ananta Dundu Lakhambare and Ors. ...Applicants

vs.

The State of Maharashtra ...Respondent

Mr.Chaitanya Pendse a/w Mr.Ranjit B. Ade i/b. Mr.Vinayak Patil –
Advocate for the Applicant in ABA No. 127 of 2023.

Mr.Vishal Patil – Advocate for the Applicant-Intervenor in IA No.800
of 2023.

Mr.A.R.Kapadnis – APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATE : 28th MARCH, 2023

P. C. :-

1. Heard learned Advocate Shri.Pendse for the Applicants,

learned Advocate for the First-Informant and learned APP for the Respondent-State.

2. The First-Informant wants intervention that is why, Interim Application is filed. It is allowed and disposed of.

ANTICIPATORY BAIL APPLICATION NO. 127 OF 2023

3. There is an FIR registered at Shahapur Police Station at C.R. No.443 of 2022 on 14th November, 2022 for the offences punishable under Sections 420, 406, 403, 465 read with 34 of Indian Penal Code, 1860 [“IPC”]. It was registered against in all 6 persons and out of them, present Applicants are Accused Nos. 2, 3 and 6. They do not belong to the family of the First-Informant Laxman Ambo Pokala. This FIR is registered on the directions given by the Court of JMFC – Shahapur under Section 156(3) of the Code of Criminal Procedure, 1973 [“Cr.P.C.”].

4. Initially, one Ambo Hari Pokala filed a private complaint before the Court of JMFC – Shahapur against in all two persons and out of them, Accused No.1 is Kashinath who is his distant cousin brother and Accused No.2 – Ganpat is the father in law of Accused No.1. Said Ambo expired and thereafter, his son Laxman who is the present First-Informant continued that litigation. Earlier to filing of

this private complaint, the said Ambo has filed a complaint to the Shahapur Police Station on 4th March, 2022 (Page No.276).

5. The sum and substance of the allegations is that the Complainant Ambo was not given the amount coming to his share from the land acquisition compensation. The total amount is Rs.3,93,75,963/-. Initially, this amount was deposited in the joint account of Ambo and Kashinath in Bank of Maharashtra. The Complainant was entitled to get 50% and it comes to Rs.1,96,87,981/-.

6. In this complaint made to Police and in private complaint, these Applicants have not been named. Furthermore, there are no allegations against them. However, when the Police conducted an enquiry into the complaint dated 4th March, 2022, it was revealed that these Applicants have in fact coordinated in between Ambo and Kashinath. So, to say in opening that account, disbursal of the amount from the joint account, doing follow-up with the Government Authorities. It was revealed during the investigation that when the amount was transferred from the joint account to individual accounts, thumb impression of deceased Ambo was taken on misrepresentation. He got only Rs.1,00,00,000/-, whereas,

Kashinath appropriated amount to his individual account and two various members of his family in excess of his share.

7. Accordingly, when the FIR is registered, there are allegations against the present Applicants that they have assisted Kashinath and monitored the entire transaction. Learned Advocate for the First-Informant invited my attention to the relevant portion from the FIR.

8. Whereas, according to learned Advocate for the Applicants-Accused, the story which is now contended was not pleaded in the earlier police complaint and in the private complaint. The said Kashinath had also given a statement before the Police on 15th March, 2022 thereby admitting his guilt and he had shown readiness to transfer an amount of Rs.96,87,981/- to the deceased Ambo Hari Pokala. According to the Applicants, copy of this statement is obtained as per the Right to Information Act. It is taken on record.

9. Whereas, according to the First-Informant, there is one offence registered at Kinhavali Police Station on 25th October, 2022 against one Harishchandra Fasale and and two others under Sections 323, 324, 504, 506 read with 34 of IPC. It was lodged by Pandurang Ambo Pokala. It is in respect of abuses and threat given on 25th October, 2022. It is prior to the registration of the present FIR.

Present Applicants have not been named in that FIR.

10. Whereas, learned APP submitted that Anticipatory Bail Application of the Co-accused Kashinath is rejected by the Court of Additional Sessions Judge. He also invited my attention to the chart reproduced in Para No.10 of the reply filed before the Court of Additional Sessions Judge – Kalyan (Page No.314) thereby showing various offences against these Applicants.

11. Today, Accused Kashinath is not before us. So, it is difficult to make any observation about readiness shown by him before the Police to pay the amount to the deceased Ambo. This Court has already granted an interim protection on 16th January, 2023. There was a direction to appear before the Investigating Officer on particular dates and accordingly, they have also attended.

12. From the above, it is clear that the dispute is in between the First-Informant and the Accused – Kashinath. It is on account of distribution of the compensation. The only question so far as criminal offence is concerned, is about what is the *modus operandi* followed while transferring the amount from the joint account of both of them to the individual accounts. I am inclined to confirm the interim protection for the reason that the First-Informant or his

father when he lodged the complaint to the Police and in the private complaint, has not stated anything about these Applicants. It may be true that certain new offences and involvement of new accused can be disclosed during investigation. But, if they say that present Applicants are also involved in that process, they ought to have mentioned it in the earlier police complaint and in a private complaint. If this is so, then the investigation is restricted only about collection of documents which the Police can do without taking Applicants into custody. Hence, following order :-

O R D E R

- (i) In case of arrest in connection with C.R. No. 443 of 2022 of Shahapur Police Station, the Applicants be released on furnishing Personal Bond and Surety Bond of Rs.25,000/-.
- (ii) They are directed to give attendance to Shahapur Police Station on Friday from 3.00 to 6.00 p.m., till filing of charge-sheet.
- (iii) They are directed not to threaten the Prosecution witnesses or to allure them in any manner.
- (iv) The Applicants are directed to co-operate the Police as and when required.

13. It is made clear that the observations made herein are prima

facie, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

14. Application is disposed of in the aforesaid terms.
15. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]