

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

ANTICIPATORY BAIL APPLICATION NO. 739 OF 2023

Jitesh Ishwar Surti ...Applicant
vs.
The State of Maharashtra and Anr. ...Respondents

**ALONGWITH
INTERIM APPLICATION NO. 961 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 739 OF 2023**

Mahesh Bhaurao Aher ...Applicant
vs.
The State of Maharashtra ...Respondent

**ALONGWITH
ANTICIPATORY BAIL APPLICATION NO. 691 OF 2023**

Rajani Anil Waghadkar ...Applicant
vs.
The State of Maharashtra ...Respondent

**ALONGWITH
INTERIM APPLICATION (ST) NO. 5080 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 691 OF 2023**

Mahesh Bhaurao Aher ...Applicant
vs.
The State of Maharashtra ...Respondent

**ALONGWITH
ANTICIPATORY BAIL APPLICATION NO. 693 OF 2023**

Anil M. Waghadkar ...Applicant
vs.

The State of Maharashtra

...Respondent

**ALONGWITH
INTERIM APPLICATION NO. 5079 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 693 OF 2023**

Mahesh Bhaurao Aher

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Sachin Dhakephalkar i/by Mr. Akshay Giri - Advocate for the Applicant in ABA 739 of 2023 and ABA 691 of 2023

Mr. Ashok Mundargi, Sr. Advocate i/by Mr. Akshay Giri – Advocate for the Applicant in ABA 693 of 2023

Mr. Harshad Bhadbhade a/w Dileep Satale, Santosh Silap and Arya Sapre – Advocate for the original informant/intervenor in IA 961 of 2023.

Mrs. M. R. Tidke - APP for the Respondent-State

API Y. M. Dongade – Rabodi Police Station

CORAM : S. M. MODAK, J.

DATE : 14th MARCH, 2023

P. C. :-

1. Heard learned Senior Advocate Shri Ashok Mundargi and learned Advocate Shri Sachin Dhakephalkar for the Applicant, also heard learned Advocate Shri Harshad Bhadbhade for the first informant, Thane Municipal Corporation and learned APP Mrs. M. R. Tidke.

2. After rejecting the application for anticipatory bail, the trial court has extended the interim protection for two weeks' from 28/02/2023. Accordingly this Court as per order dated 08/03/2023 has extended it.

3. The proposed purchaser i.e. Thane Municipal Corporation has filed F.I.R. with Rabodi Police Station on 03/02/2023 against the Trustees of the Salehbhai Habibullah Trust and against the purchasers who are the partners of M/s. Cleverland Properties LLP. The offence is registered under Sections 420, 467, 199 and 120-B of the Indian Penal Code. Their grievance is that by executing the sale deed on 10/12/2020 by the Trustees in favour of M/s. Cleverland Properties LLP, the Trustees have deprived them. Earlier to that there was an agreement for sale in between the said Trustees and erstwhile Thane Municipal Council dated 28/12/1978. Possession was also handed over to the Council. Certain consideration was also paid to the Trustees. When the office of the Charity Commissioner was approached, permission was granted as per the provision of Section 36 of the Bombay Public Trusts Act on 11/05/1978. There was reservation for school and play ground on part of the land. The conditions put while granting permission were

not fulfilled and as such sale deed was not executed till today.

4. The description of the land is Survey No. 57-58, situated at Village Panhpakhadi, Taluka and District - Thane. The Thane Municipal Council has constructed a school and that was running till the time the building is declared as dilapidated. The building was also demolished and school is shifted to other place.

5. In the meantime, the Thane Municipal Corporation has been constituted and on 13/10/2017, the Corporation has decided to erect the Education Sankul. It is contention of the Corporation that the Trustees were aware that they are not in possession, still for defrauding interest of the Corporation, after obtaining the permission from Charity Commissioner, the Trustees have executed the sale deed with M/s. Cleverland Properties LLP on 10/12/2020.

6. The contention of the first informant is that it was not disclosed to learned Charity Commissioner that the Corporation is in possession and the valuation of the land is very much less as compared to market valuation and as such there is wrongful loss to the Corporation. It is also said that in fact the date of the sale deed is 27/05/2020. The resolution by which the Trustees were authorized to sign the sale deed is of later date i.e. 20/11/2020. That is why it

is said that there is conspiracy in between the Trustees and the partners.

7. Learned Senior Advocate Shri Mundargi submitted that even after reading the avernments in the F.I.R. none of the offence are disclosed. He has read over the provisions of Section 415 and 463 of the Indian Penal Code and he relied upon judgment in case of Mohammed Ibrahim and Others Vs. State of Bihar and Another¹

8. According to him the dispute is pending with Civil Court and admittedly there is no sale deed in favour of the Corporation. There is a suit for specific performance filed by the Corporation against the Trustees on the basis of the agreement of sale dated 28/12/1978 and there is suit for possession filed by the Applicant/purchaser against the Corporation. He has justified the consideration of the sale deed for the reason that the title of the land is under cloud.

9. Whereas learned Advocate Shri Dhakephalkar submitted that even though sale deed was executed on 27/05/2020, the document was pending for registration for adjudication and after it was clear, document was actually registered on 10/12/2020. That is

1 (2009) 8 Supreme Court Cases 751

why he submitted that date of the resolution is after date of execution but prior to the date of actual registration.

10. Learned APP submitted that custodial interrogation of the Applicant is required and he pleaded two more materials. There is F.I.R. registered on 06/01/2023 at C.R. No. 6 of 2023 with Rabodi Police Station under Section 448 of the Indian Penal Code against unknown person. It is in respect of act of encroachment by erecting the cabin on the land which is possessed by the Corporation. Furthermore, she submitted that M/s. Cleverland Properties LLP has sold property to one M/s. Kamran Live Stock and Real Estate Pvt. Ltd.. They have lodged the complaint with Rabodi Police Station on 06/01/2023 and there is non cognizable offence registered against the partners of M/s. Cleverland Properties LLP. This allagation is denied by the Applicant.

11. From the above facts, it is clear that admittedly there is no sale deed in favour of the Corporation. So also the Trustees have not disputed that the land is in possession of the earlier council and now with present Corporation. It may be true that the Applicants might have not disclosed to the Charity Commissioner that the land is in possession of the Corporation. If that allegation is true certainly

the Corporation has filed the Writ Petition thereby challenging the grant of permission. So that forum is available to the Corporation. It is also true that till recently Corporation has not taken any steps for making their title perfect by way of filing suit for specific performance. It is also true that still recently Trustees have also not instituted any suit for restoration of the possession.

12. If one will read the provisions of Section 415 of the Indian Penal Code, it is clear that there has to be some inducement and on the basis of said inducement the deceived party have done some act. There is no grievance by the Trustees against these Applicants that they were deceived. So what are acts of cheating they are executing the sale deed and obtaining permission from the Charity Commissioner. Admittedly, the Corporation is not the party to the sale deed. So far as not disclosing certain facts to the Charity Commissioner, the forum is available to the Corporation. So at the most what is grievance is that by executing a sale deed serious prejudice is caused to their interest.

13. Furthermore as per the provision of Section 463 of the Indian Penal Code, there has to be execution of false document either by dishonestly or fraudulently. These ingredients are

elaborated by the Hon'ble Supreme Court in the above referred judgment.

14. Admittedly, the Corporation is not party to the sale deed. It is having grievance that their rights are jeopardized by execution of the sale deed. So at the most this Court feels that they may be having good case in that writ petition or before Civil Court. So far as violation of penal law is concerned, I prima-facie feels that the ingredients of Section 415 and 463 are lacking. These are my observations for deciding the anticipatory bail application.

15. In view of that I think that the case for grant of anticipatory bail is made out. So I am inclined to grant them anticipatory bail. Even though the Court of Additional Sessions Judge has rejected it by giving reasoning in para nos. 34 to 39, for above discussion, I feel that they are entitled for the anticipatory bail. Hence following Order:-

ORDER

(i) All anticipatory bail applications are allowed.

(ii) In case of arrest in connection with C.R. No. 29 of 2023, registered with Rabodi Police Station for the offence punishable under Sections 420, 467, 199

amd 120-B of the Indian Penal Code, the Applicants be released on furnishing Personal bond and Surety in sum of Rs. 25000/- each.

(iii) Applicants have to give attendance to Rabodi Police Station on every Monday from 10 a.m. to 12.00 noon until filing of the charge-sheet.

16. 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.

17. All Anticipatory bail Applications as well as Interim Applications are disposed of in the aforesaid terms.

18. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]