

AGK

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

ANTICIPATORY BAIL APPLICATION NO.1645 OF 2023

Suyog Suresh Pagade

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

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GANESH
KULKARNI
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Mr. Tanaji Solankar for the applicant.

Mr. Pandurang H. Gaikwad, APP for respondent No.1/
State.

Mr. Rahul Gaikwad with Mr. Aman Jhawar and Ms.
Garima Joshi i/by Gravitas Legal for respondent No.2/
first informant.

Mr. A.D. Gije, API, Uran Police Station, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 6, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.217 of 2022 registered with Uran Police Station, Raigad for offences punishable under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860, the applicant is seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973.

2. According to prosecution, one Pushpa Bhadrakumar Savjani lodged a report alleging that she and her husband Bhadraumar Jamnadas Savjani are the owners of property bearing Survey

Nos.108/1/A, 71/6 and 69/4/A ad-measuring 16 acres. In 2022, it was revealed that Survey No.71/6 has been sold by sale deed dated 17 May 2022. Her deceased husband is one of the executant of the sale deed. Property was sold for consideration of Rs.34,75,000/-. The applicant is the person who along with other co-accused entered into sale deed with Bhadrakumar Savjani and Pushpa Savjani in respect of 25 Guntha of land out of Survey No.71/6.alleged to have executed the sale deed.

3. The applicant applied seeking anticipatory bail before the learned Sessions Judge which came to be rejected by order dated 30 December 2022. The applicant, therefore, filed present anticipatory bail application.

4. Learned advocate for the applicant submitted that the applicant is proprietor of M/s.Swarajya Infrastructure dealing in the business of sale-purchase of agricultural/non agricultural land and housing projects. He has no antecedent to her discredit. He is not beneficiary of the transaction. He is protected by this Court. He has cooperated with the investigation. Offence is documentary in nature and, therefore, custodial interrogation of the applicant is not required.

5. Heard learned advocate for the applicant, learned APP and learned advocate for the victim. On perusal of the material on record, it appears that consideration clause of sale deed contains a recital that other purchasers except the applicant are not aware about the identity of the vendor and entire transaction has been done by the applicant. The amount of consideration is transferred

through the company of the applicant.

6. It is prima facie clear that executant of sale deed, i.e. Bhadrakumar Savjani died in the year 2003. It prima facie appears that the accused persons in connivance with the imposters opened the account in the name of executant, Bhadrakumar Savjani. The statement of Bank Manager indicates accused Nos.14 and 15 accompanied old person who has opened the account. The account was opened in the year 2021 when the account holder died in the year 2003. The aforesaid circumstances along with recital as stated above shows that the purchasers were aware about the death of executant No.1. However, by impersonating dead person they got sale deed executed in their favour. Therefore, the applicant is not entitled to relief under Section 438 of the Criminal Procedure Code, 1973.

7. In so far as the submission of custodial interrogation is concerned, the Apex Court in the case of **Sumitha Pradeep v. Arun Kumar C.K. & Another** reported in 2022 SCC OnLine SC 1529 was considering grant of bail to an accused charged with an offence under Protection of Children from Sexual Offences Act, 2012. The Apex Court, in paragraph 16, observed as under:

“16. ... In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an

application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the *prima facie* case against the accused should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the *prima facie* case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

8. In that view of the matter, the applicant has failed to make out a *prima facie* case for grant of relief under Section 438 of the Criminal Procedure Code, 1973. The anticipatory bail application, therefore, stands rejected. No costs.

9. It is made clear that the observations made in the order dated 6 July 2023 are made only for the purposes of deciding application under Section 438 of the Criminal Procedure Code, 1973 and the Trial Court shall not be influenced by the observations while considering the bail application or while deciding the trial.

(AMIT BORKAR, J.)

This order is modified as per order dated 19 July 2023 to insert paragraph 9.