



Diksha Rane

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

ANTICIPATORY BAIL APPLICATION NO.325 OF 2023

Ishawar Khushaldas Punjabi	..Applicant
VS.	
The State of Maharashtra	..Respondent

**WITH
INTERIM APPLICATION NO.677 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.325 OF 2023**

Ishan Co-operative Housing Society Ltd through its Chairman Dr. Prasad Prakash Bhatlawande	..Applicant
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IN THE MATTER BETWEEN

Ishawar Khushaldas Punjabi	..Applicant
VS.	
The State of Maharashtra	..Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.715 OF 2023**

Anjali Sahashank Nivsarkar	..Applicant
VS.	
The State of Maharashtra	..Respondent

**WITH
INTERIM APPLICATION NO.1082 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.715 OF 2023**

Ishan Co-operative Housing Society Ltd through its Chairman Dr. Prasad Prakash Bhatlawande	..Applicant
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IN THE MATTER BETWEEN

Anjali Sahashank Nivsarkar	..Applicant
VS.	
The State of Maharashtra	..Respondent

**WITH
BAIL APPLICATION NO.1129 OF 2023**

Rajiv Yashwant Bhale	..Applicant
VS.	
The State of Maharashtra	..Respondent

**WITH
INTERIM APPLICATION NO.2204 OF 2023
IN
BAIL APPLICATION NO.1129 OF 2023**

Ishan Co-operative Housing Society Ltd through its Chairman Dr. Prasad Prakash Bhatlawande	..Applicant
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IN THE MATTER BETWEEN

Rajiv Yashwant Bhale	..Applicant
VS.	
The State of Maharashtra	..Respondent

Adv. Niranjana Mundargi i/b. Adv. Kunal Ambalkar for the applicant in ABA/715/2023.
Adv. Ashok Mundargi, Senior Advocate a/w. Dr. Chinmay S. Bhosale for the applicant in BA/1129/2023.
Adv. Manoj Mohite, Senior Advocate a/w. Adv. T. d. Deshmukh & Adv. H. D. Chavan i/b. Adv. Sagar Kursija for the applicant in ABA/325/2023.
Ms. Veera Shinde, APP for the State.
Adv. Avinash B. Avhad a/w. Adv. Hrishikesh Giri a/w. Adv. Sahil Satyavan Ghule a/w. Adv. Swapnil Chopade a/w. Adv. Rahul Kamble for the intervener.
API Jitesh C. Shingote, EOW, Pimpri-Chinchwad.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 31, 2023

P.C. :

- 1.** Heard learned senior advocate and learned counsel for the applicants, learned APP for the State and learned counsel for the intervener.
- 2.** These applications arise out of the same C.R.. The applications are disposed of by a common order by consent. One is an application for bail while two of the applications are for pre-arrest bail.
- 3.** These are the applications in respect of the offence punishable under Sections 406, 420, 120-B, 467, 468 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) registered on 13/6/2019 vide C.R. No.680/2019 with Wakad Police Station, Pune, subsequently transferred to the Economic Offences Wing, Pimpri-Chinchwad, Pune.
- 4.** There are in all five accused. The applicant-Rajiv Yashwant Bhale in Bail Application No.1129 of 2023 is the accused no.1. The applicant - Ishawar Khushaldas Punjabi in Anticipatory Bail Application No.325 of 2023 is the accused no.5. The applicant - Mrs. Anjali Sahashank Nivsarkar in Anticipatory Bail Application No.715 of 2023 is the accused no.3.

5. The accusations in brief against the accused are that in respect of the landed property which is the subject matter of the C.R.No.680/2019, the same belonged to Deo family. The said properties were subject matter of the acquisition and even the award was passed under the Land Acquisition Act on 23/9/1986. During the pendency of the award, an agreement was entered into by Deo family with the applicant-Rajiv Yashwant Bhale for sale of their rights in the said land. Consideration was paid by the applicant-Rajiv Yashwant Bhale to Deo family.

6. It is the contention of learned APP as well as learned counsel Mr. Avhad appearing on behalf of the intervener-society that such an agreement could not have been entered into after the issuance of Section 4 notification and in any case, the award was passed and such an agreement is in the teeth of the provisions of the Land Acquisition Act.

7. It is material to note that on 7/7/1992, the State Government released 29.88 acres land in favour of proposed Ishan Co-operative Housing Society Ltd and Ankita Co-operative Housing Society Ltd on the representation made by Deo family. Such release order is at page 43 of the

paperbook.

8. Learned APP as well as learned counsel for the intervener-society placed much emphasis on the release order dated 7/7/1992 and contended that such a release in favour of the four societies was on certain terms and conditions mentioned thereunder. It is the contention of learned APP as well as learned counsel for the intervener-society that the conditions of release are breached. It is alleged that the applicant Rajiv Yashwant Bhale developed the said lands and misappropriated an amount of Rs.43,26,32,570/- which belonged to the society.

9. It is the accusation that the said applicant Rajiv Yashwant Bhale had made his employees as the members of the proposed society and sold the developed land at exorbitant prices to the various persons who were later inducted as members of the society. In brief, it is the accusation that the applicant-Rajiv Yashwant Bhale had entered into the various agreements with Deo family as well as the society and thereby incorporated clauses which ultimately monetarily benefited the applicant Rajiv Yashwant Bhale to the detriment of the society. As a result of such

manipulations which is spelt out in detail in the First Information Report (FIR) lodged by the auditor alleging wrongful loss to the society and in the process the said applicant-Rajiv Yashwant Bhale derived unlawful pecuniary gains to which he was not entitled. Such amount of misappropriation was to the tune of Rs.43,26,32,570/-.

10. The applicant- Rajiv Yashwant Bhale was arrested on 29/12/2022 and is in custody since then. Learned senior advocate submitted that there are agreements which accused Rajiv Yashwant Bhale has with Deo family. It is further submitted that the applicant has spent huge amounts in developing the said land. Learned senior advocate submitted that the society is not justified in contending that the entire money should have been paid in the account of the society as the amounts are received by the applicant pursuant to valid agreements which are never challenged by the society. Learned senior advocate further submitted that the investigation is complete and the charge-sheet has now been filed. It is further submitted that the applicant is even willing to voluntarily secure part of the amount without prejudice to his rights and contentions only

to show his bonafides. The affidavits are, therefore, filed on behalf of the applicant Rajiv Yashwant Bhale by his son and other by his daughter. Learned senior advocate further submitted that even the applicant is willing to file an affidavit within a period of two weeks from his release confirming the affidavits filed by his son and daughter for securing part of the amount involved in the offence without prejudice.

11. Learned APP as well as learned counsel for the intervener-society vehemently opposed the application for bail. It is submitted that the applicant-Rajiv Yashwant Bhale has committed large scale misappropriation and misused his position as promoter/developer of the society. It is submitted that the applicant's employees were made members of the proposed society and the applicant Rajiv Yashwant Bhale has got documents executed in his favour to further his interest to the detriment of the society. It is submitted that resultant misappropriation is to the tune of Rs.43,26,32,570/-. Reliance is placed on the auditor's report to demonstrate the manner in which the applicant Rajiv Yashwant Bhale is responsible for the misappropriation. In

such circumstances, it is submitted that the applicant should not be enlarged on bail.

12. So far as the applicant-Mrs. Anjali Sahashank Nivsarkar is concerned, she was the chairman of Ishan Co-operative Housing Society Ltd. for the period of 2001-2013. It is alleged that she has misused her position and has virtually helped the applicant-Rajiv Bhale in the misappropriation. There is nothing on record to indicate that the applicant-Mrs. Anjali Sahashank Nivsarkar is a beneficiary of the amounts misappropriated. Learned APP submitted that though the applicant-Mrs. Anjali Sahashank Nivsarkar joined the investigation but she is not co-operating with the investigation as some of the records which the investigating officer wanted her to produce are not being produced by her. Learned counsel Mr. Niranjan Mundargi submitted that whatever records were available with the applicant-Mrs. Anjali Sahashank Nivsarkar have been produced as in any case now there is a new body of Managing Committee and all records are in their custody. Learned counsel Mr. Mundargi submitted that the applicant-Mrs. Anjali Sahashank Nivsarkar is willing to co-operate with

the investigation. Pre-arrest bail is prayed on the ground that she is a woman 75 years of age.

13. So far as the applicant -Ishawar Khushaldas Punjabi is concerned, learned senior advocate Mr. Mohite submitted that he had purchased a plot from the society through the applicant- Rajiv Yashwant Bhale. Initially, some amount was paid by him but later on as he was in a position to complete the transaction, the said plot was sold to a third party. The accusation is that an amount of Rs.5.5 crores was paid to accused Rajiv Yashwant Bhale. This transaction is of the year 2010. Looking at the nature of the accusations against the applicant-Ishawar Khushaldas Punjabi, the custodial interrogation is not required in my opinion. The accusation is that the applicant-Rajiv Bhale benefitted as a result of such sale. The applicant has joined the investigation and has co-operated.

14. In my opinion, though the application for pre-arrest bail of the applicant Mrs. Anjali Sahashank Nivsarkar and the applicant Ishawar Khushaldas Punjabi is vehemently opposed by learned APP as well as learned counsel for the intervener-society, considering that these applicants have

joined the investigation and as all the documents pertaining to the alleged transactions are in the custody of the investigating officer, custodial interrogation of the applicants Mrs. Anjali Sahashank Nivsarkar and Ishawar Khushaldas Punjabi is not required. The allegations are mainly against the applicant-Rajiv Bhale, who is the prime accused. It is submitted by learned counsel for the applicants Mrs. Anjali Sahashank Nivsarkar and Ishawar Khushaldas Punjabi that the applicants undertake to co-operate with the investigation and shall report to the investigating officer as and when called. Statement is accepted. I am, therefore, inclined to enlarge the applicants Mrs. Anjali Sahashank Nivsarkar and Ishawar Khushaldas Punjabi on bail in the event of their arrest. No criminal antecedents are reported against them.

15. So far as the applicant Rajiv Yashwant Bhale is concerned, considering that the applicant is now in custody for more than ten months, as the investigation is complete and the charge-sheet has been filed, further custody of the applicant Rajiv Yashwant Bhale will only be by way of a pre-trial punishment. The applicant Rajiv Yashwant Bhale is no

more concerned with the affairs of the society as the new Managing Committee of the society is already in place. It is open for the society to resort to appropriate proceedings and remedies for ventilating their grievance. The applicant will face the consequence if he is found guilty post-trial. There is no question of the applicant Rajiv Yashwant Bhale tampering with the evidence as the entire documents are either with the investigating officer or with the society and as the applicant Rajiv Yashwant Bhale is no longer an office bearer of the society in any capacity whatsoever.

16. The affidavits filed by the son and daughter of the applicant-Rajiv Bhale securing the immovable properties mentioned in the affidavits are taken on record. The applicant to file the affidavit as indicated hereinbefore within a period of two weeks from the date of his release. The applicant-Rajiv Bhale as well as his son and daughter to abide by the statements made in the affidavits filed by them referred to hereinbefore. Hence the following order.

ORDER

(a) The applications are allowed.

(b) The applicant- Rajiv Yashwant Bhale in connection with C.R. No.680/2019 registered with Wakad Police Station, Pune, subsequently transferred to the Economic Offences Wing, Pimpri-Chinchwad, Pune, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more solvent sureties in the like amount.

(c) The applicant- Rajiv Yashwant Bhale is permitted to furnish cash bail surety in the sum of Rs.1,00,000/- for a period of 6 weeks in lieu of surety.

(d) The applicant-Rajiv Yashwant Bhale shall attend the Investigating Officer of the Economic Offences Wing, Pimpri-Chinchwad, Pune, once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m. till further orders of the trial Court.

(e) In the event of arrest in connection with C.R. No.680/2019 registered with Wakad Police Station, Pune, subsequently transferred to the Economic Offences Wing, Pimpri-Chinchwad, Pune, the applicants (1) Mrs. Anjali Sahashank Nivsarkar and (2) Ishawar Khushaldas Punjabi shall be released on bail on furnishing P.R. bonds to the extent of Rs.50,000/- each with one or more sureties of the like amount.

(f) The applicants (1) Mrs. Anjali Sahashank Nivsarkar and (2) Ishawar Khushaldas Punjabi shall attend the investigating officer as and when called and co-operate with

the investigation till filing of the charge-sheet.

(g) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicants shall not tamper with evidence.

(h) On being released on bail, the applicants shall furnish their contact numbers and residential addresses to the Investigating Officer and shall keep him updated, in case there is any change.

(i) The applicants shall attend the trial regularly. The applicants shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(j) The applicants shall not leave the country without prior permission of the trial court or without intimation to the Investigating Officer.

(k) The applicants (1) Rajiv Yashwant Bhale and (2) Mrs. Anjali Sahashank Nivsarkar shall surrender their passports, if any, to the investigating officer.

17. The applications are disposed of.

18. The interim applications are also disposed of.

(M. S. KARNIK, J.)