

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

ANTICIPATORY BAIL APPLICATION NO. 1793 OF 2021

Nilesh Chandrakant Pawar ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 1916 OF 2021

Sayed Husen s/o Sayed Jamaal ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 1999 OF 2021

1. Kishor Janardan Keni
2. Sangram Prakash Gharat
3. Yogesh Jagdish Kharpatil
4. Sandesh Bhaskar Bhoir ...Applicants

Versus

The State of Maharashtra ...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 2139 OF 2021

Balkrishna Mahadeo Thakur ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Ashok Mundargi, Senior Advocate, i/b Rohan Hogle, for
the applicant in ABA/1793/2021.

Mr. Nitin Sejpai, a/w Mrs. Pooja Sejpai, for the Applicant in
ABA/2139/2021.

Mr. Amin Solkar, a/w Ms. S. Khan, for the Applicant in ABA/
1916/2021.

Mr. Niranjan Mundargi, i/b Mr. Saurabh Butala, for the
Applicant in ABA/1999/2021.

Mr. P. H. Gaikwad, APP for the State/Respondent.

Mr. Laxman Shahpur, a/w Mr. R. Mishra, for the Intervener.

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CORAM: N. J. JAMADAR, J.
Reserved On: 25th OCTOBER, 2023
Pronounced On: 2nd NOVEMBER, 2023

ORDER:-

1. These applications are preferred for pre-arrest bail in connection with CR No.209 of 2021, registered with Uran Police Station, for the offences punishable under Sections 120-B, 420, 465, 467, 468 and 471 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

2. Kisanrao Rathod, the first informant, deals in real estate business under name and style of Infratech. He is engaged in the sale and purchase of lands in Mumbai, Navi Mumbai and Pune. He has a team, which verifies the documents of title, assesses the legality of the transactions to be entered into, and on the basis of the legal advice, the first informant enters into the transactions. As the first informant is engaged in the real estate business, on a large scale, Nilesh Pawar, the applicant in ABA/1793/2021, who was employed with the first informant, was given a Power of Attorney to admit the execution of the documents and tender the documents for registration.

3. Ghanshyam Bhoir, accused No.1, was allegedly introduced to the first informant by applicant Nilesh Pawar.

Accused No.1 Ghanshyam Bhoir made a representation that he was the owner of agricultural land bearing Survey No.98/36/A. After Ghanshyam offered to sell the said land, applicant Nilesh Pawar had told the first informant that he had personally seen the said land and acquisition of the said land and re-sale thereafter by converting said land into plots, would be profitable. The first informant further alleged Yogesh Kharpatil, Sandesh Bhoir, Sangram Gharat and Kishor Keni, the applicants in ABA/1999/2021, and Balkrishna Thakur, the applicant in ABA/2139/2021, who work as Estate Brokers, had also represented to him that they had seen the land of accused No.1 Ghanshyam Bhoir and assured the first informant that the documents were genuine.

4. Believing the representations of the applicants and the title search issued by Vinayak Tamhankar, Legal Advisor, the first informant claimed to have entered into transaction to purchase the lands of accused No.1 Ghanshyam Bhoir bearing Survey No.98/36/A and Survey No.116/9. A registered Power of Attorney was thus executed by accused No.1 Ghanshyam Bhoir in favour of the first informant on 15th June, 2018. The first informant was empowered to sell and

alienate the said land by accused No.1 Ghanshyam Bhoir. On the strength of the said Power of Attorney the first informant, in turn, conveyed the portions of the said land to various purchasers by executing registered instrument. The first informant had paid a sum of Rs.1,28,16,000/- by cheques and Rs.54,21,000/- in cash to accused No.1 Ghanshyam Bhoir during the period 14th August, 2019 to 16th September, 2020.

5. The first informant alleged after few days of the execution of the Power of Attorney by Ghanshyam Bhoir and parting with a part of the consideration, Yogesh Kharpatil, applicant No.3 in ABA/1999/2021, informed him that there was an issue regarding mutation of names in the record of rights of the subject land. The first informant alleged, Sayed Husen, the applicant in ABA/1916/2021, who was then working as a Circle Officer at village Jui, Taluka Uran came to his office alongwith accused No.1 Ghanshyam Bhoir and assured him that by obtaining the order of the then Tahsildar, he would ensure that the names of the prospective purchasers are mutated to the record of rights and asked him to pay the balance consideration to accused No.1 Ghanshyam Bhoir.

6. It later transpired that the authorities declined to mutate the names of the prospective purchasers to the record of rights of Survey No.98/36/A as the said survey number and the land was not shown in the *aakarbandh*. An application to carry out measurement submitted by one of the purchasers was not entertained by the Land Records Office on the ground that the area covered by Survey No.98/36/A did not tally with the *aakarbandh*. Eventually an entry of deletion of Survey No.98/36/A from the record of rights was passed by the Tahsildar, Uran, on 17th May, 2021. Having realized that the first informant was duped, report came to be lodged against Ghanshyam Bhoir, accused No.1, the applicants and others.

7. Apprehending arrest the applicants preferred these applications for pre-arrest bail. Initially accused No.1 Ghanshyam Bhoir also preferred the application. However the said application was withdrawn and, subsequently, accused No.1 Ghanshyam Bhoir came to be arrested.

8. When the application of Nilesh Pawar (ABA/1793/2021) was listed before the Court on 3rd August, 2021, this Court was persuaded to grant interim bail. Subsequently, rest of the applicants have also been granted interim relief.

9. The first informant has filed intervention application in each of the applications and resisted the prayer for pre-arrest bail.

10. I have heard Mr. Ashok Mundargi, the learned Senior Counsel for the applicant in ABA/1793/2021, Mr. Sejpal, the learned Counsel for the applicant in ABA/2139/2021, Mr. Solkar, the learned Counsel for the applicant in ABA/1916/2021 and Mr. Niranjana Mundargi, the learned Counsel for the applicants in ABA/1999/2021, Mr. Gaikwad, the learned APP for the State and Mr. Shahpur, the learned Counsel for the first informant/intervener, at some length.

11. Mr. Mundargi, the learned Senior Counsel for the applicant – Nilesh Pawar, took the Court through the allegations in the FIR. Laying emphasis on the fact that the first informant has been dealing in the real estate, on a large scale and, has a full fledged legal team, Mr. Mundargi would urge that the applicant Nilesh Pawar, who was given a Power of Attorney only to tender the instruments for registration, is sought to be made a scapegoat. The allegations in the FIR that it was the applicant Nilesh Pawar, who had introduced accused No.1 Ghanshyam Bhoir to the first informant and on the strength of the representation made by the applicant

Nilesh Pawar, the first informant entered into transaction with accused No.1 Ghanshyam Bhoir have been made only to rope in the applicant Nilesh Pawar, submitted Mr. Mundargi.

12. Mr. Mundargi would urge that the first informant has blamed everyone, except himself, though the first informant is the beneficiary of the transactions. It was further submitted that the Sale Deed dated 22nd August, 2019 executed by the first informant in favour of the purchasers indicates that the first informant had received consideration from the then prospective purchasers in the month of December, 2018 that belies the claim that it was the applicant Nilesh Pawar, who had allegedly introduced the vendor Ghanshyam Bhoir to the first informant in the month of July, 2019. Moreover, the Power of Attorney was executed by Ghanshyam Bhoir on 14th August, 2019 in favour of the first informant himself. The first informant was the executant to the said Power of Attorney and not applicant Nilesh Pawar.

13. Mr. Mundargi would therefore urge that at this length of time when accused No.1 Ghanshyam Bhoir has been arrested, the investigation is complete for all intent and purpose, the order of interim bail deserves to be made absolute.

14. Mr. Solkar, the learned Counsel for the applicant – Sayed Husen in ABA/1916/2021, submitted that the first informant, who has, in fact, duped many unsuspected purchasers has roped in applicant Syed Husen, the then Circle Officer, as the applicant had rejected many applications for mutation in respect of the lands dealt with by the first informant, including the subject land. To wreak vengeance the first informant has falsely alleged that the applicant met him and assured that he would get the mutation entries certified. Mr. Solkar submitted that in the creation of a new 7/12 extract in respect of Survey No.98/38/A the applicant had no role as the proposal was submitted by the then Talathi and order was passed by the then Tahsildar under Section 155 of the Maharashtra Land Revenue Code.

15. Mr. Sejpal, the learned Counsel for the applicant Balkrishna Thakur in ABA/2139/2021, would urge that the applicant has been implicated for being the signatory to the irrevocable Power of Attorney executed by accused No.1 Ghanshyam Bhoir in favour of the first informant. It is nobody's case that the said Power of Attorney is forged.

16. Mr. Niranjana Mundargi, the learned Counsel for the applicants in ABA/1999/2021, submitted that the case of the first informant that the applicants, who worked as Estate Brokers, had represented that accused No.1 Ghanshyam Bhoir was the owner of the subject land and the documents were genuine and, therefore, he was induced to enter into the transaction is belied by the fact that the first informant has been dealing in the business of real estate armed with a battery of employees including Legal Advisors. In fact, one of the applicants namely Yogesh Kharpatil, applicant No.4 (ABA/1999/2021), had sounded off the first informant about the issues with regard to the mutation of the names of the purchasers to the subject land. Therefore, no element of criminality can be attributed to any of the applicants, who were working as the estate agent.

17. The learned APP submitted that more than 50 persons were induced to purchase non-existent land. They were made to part with huge amount. The allegations in the FIR are required to be seen in this context. The learned APP submitted that there was a deep rooted conspiracy in getting hand written 7/12 extract of a non-existent survey number i.e. 98/36/A created and thereafter making the said 7/12

extract available online by obtaining the orders of the Tahsildar and thereafter executing instrument in respect of the non-existent land. It was submitted that the accused alongwith officials of the Revenue Department have indulged in the fraudulent acts and, therefore, custodial interrogation of each of the applicants is warranted to have effective investigation.

18. Mr. Shahpur, the learned Counsel for the first informant/intervener, strenuously submitted that the first informant was duped in pursuance of a criminal conspiracy involving the officers of the Revenue Department. Inviting the attention of the Court to the report submitted by the Sub-Divisional Officer on 10th August, 2022, pursuant to the directions of this Court in the order dated 18th August, 2021, Mr. Shahpur would urge that the manner in which a hand written 7/12 extract was initially prepared by the revenue officials in respect of the non-existent land and the complicity of the persons involved therein has been adverted to in the said report. In fact, Survey No.98/36/A never existed in the *aakarbandh*. The agricultural land bearing Survey No.98/36/A is not shown in the revenue record of village Jui. Mr. Shahpur would submit that the Sub-Divisional Officer has

fixed the responsibility of the then Talathi, Jui and Circle Officer, Kopruli (Sayed Husen, the applicant in ABA/1916/2021) and, therefore, Departmental Enquiry is proposed to be initiated against them. Mr. Shahpur further submitted that the first informant has not collected huge money as alleged by the investigating agency. To show his *bona fides* the first informant has assured the purchasers a form of security by keeping aside another land to meet their claim.

19. I have given anxious consideration to the rival submissions. The report of Sub-Divisional Officer indicates that record of right of Survey Nos.98/36/A and 116/9 were shown to have been maintained hand written. Those two survey numbers were not shown in the *aakarbandh* of the village. On 4th June, 2019 the then Talathi, Jui, submitted a proposal to computerise the record in respect of Survey No.98/36/A. On 6th June, 2019 the then Tahsildar passed an order under Section 155 of the Maharashtra Land Revenue Code and the Talathi certified ME No.3009 mutating the name of accused No.1 Ghanshyam Bhoir to Survey Nos.98/36/A and 116/9. Indisputably, Survey No.98/36/A was in respect of a non-existent land.

20. The report, *inter alia*, records that while creating those 7/12 extracts in respect of Survey Nos.98/36/A and 116/9 original *aakarbandh* were not verified. The Sub-Divisional Officer has proposed Departmental Enquiry against the then Talathi Mr. Anil Joshi and the Circle Officer Mr. Husen Sayed, the applicant in ABA/1916/2021.

21. The situation which thus obtains is that accused No.1 Ghanshyam Bhoir executed a registered Power of Attorney in favour of the first informant thereby empowering the first informant to sell the land bearing Survey No.98/36/A. On the strength of the said Power of Attorney the first informant executed Sale Deeds of portions of the land in favour of the purchasers. There is material to show that the first informant paid consideration to accused No.1 Ghanshyam Bhoir. The first informant also received consideration from the purchasers. As it turned out that Survey No.98/36/A was in respect of a non-existent land, 7/12 extract of Survey No.98/36/A was cancelled.

22. As far as the role of Nilesh Pawar, the submission of Mr. Mundargi, the learned Senior Advocate, that he has been made a scapegoat, after the fraud was unearthed, is required to be appreciated in the light of the allegations in the FIR and

the material on record. Much weight can not be attached to the allegation that on the basis of the representation of Nilesh Pawar the first informant was induced to enter into transaction. The first informant had the requisite man power, legal team and official set up to equip him to enter into the transactions, which he considered legal and profitable. However, at this stage, the role attributed to Nilesh Pawar by accused No.1 Ghanshyam Bhoir assumes importance.

23. It is true Ghanshyam Bhoir, being a co-accused, his statement does not constitute a substantive piece of evidence. However, at the stage of investigation the statement of co-accused cannot be completely brushed aside, as being of no utility. Accused No.1 Ghanshyam Bhoir has adverted to not only the role of Nilesh Pawar, but also the first informant Kisanrao Rathod, in the entire episode. Both Nilesh Pawar and Kisanrao Rathod were attributed with the representation that a new 7/12 extract would be created in the name of accused No.1 Ghanshyam Bhoir and thereafter accused No.1 should execute a Power of Attorney in favour of the first informant. Ghanshyam Bhoir also adverts to the role of the first informant after the fraud came to the light. Ghanshyam Bhoir states that the applicant Nilesh Pawar had taken a

substantial part of the money which was credited to the account of Ghanshyam Bhoir.

24. The role attributed to the applicant Nilesh Pawar is thus required to be considered through the prism of the nature and magnitude of the fraud. It is naive to believe that 7/12 extract of a non-existent land could be obtained by accused No.1 Ghanshyam Bhoir, on his own. Involvement of many a persons in the fraudulent acts is evident. ME No.3009 mutating the name of accused No.1 Ghanshyam Bhoir was certified on 19th July, 2019. On 14th August, 2019, within a month, accused No.1 Ghanshyam Bhoir executed registered irrevocable Power of Attorney in favour of the first informant. In the peculiar facts of the case, in my considered view, the statement of accused No.1 Ghanshyam Bhoir furnishes a justifiable ground to carry out further investigation qua applicant Nilesh Pawar. The role of making initial representation, to execution of instrument, to taking away a substantial amount out of the consideration, which was credited to the account of accused No.1, has been attributed to Nilesh Pawar. I am, therefore, persuaded to hold that custodial interrogation of Nilesh Pawar is necessary for an effective and complete investigation.

25. As regards the role of Sayed Husen, undoubtedly in the report of Sub-Divisional Officer it is recorded that the Talathi, village Jui, and the Circle Officer had not verified the *aakarbandh* and created a 7/12 extract in respect of non-existent survey number and thus departmental enquiry has been proposed against both of them yet the report makes it abundantly clear that it was the Talathi, Jui, who had submitted the proposal and the then Tahsildar had passed an order under Section 155 on the said proposal.

26. In the FIR, the role attributed to Sayed Husen is that of assuring the first informant that the mutation entry in respect of the subject land would be certified. Mr. Solkar, the learned Counsel for the applicant, pointed out that the applicant had, in fact, refused to certify many mutation entries and, therefore, the first informant had a grudge against the applicant. Attention of the Court was invited to the list of the mutation entries, which were cancelled by the applicant. As many as 22 mutation entries were refused to be certified by the applicant. It is imperative to note that even in respect of the subject land i.e. Survey No.98/36/A, the applicant had rejected Mutation Entry No.3044, 3058, 3062, 3082, 3202 and 3205. Mutation Entry No.3044 was rejected

on 16th January, 2020. The FIR came to be lodged on 19th July, 2021.

27. *Prima facie* even before the lodging of the FIR the applicant had refused to certify mutation entries in respect of subject land. In this view of the matter, I find substance in the submissions of Mr. Solkar that the applicant Sayed Husen had neither submitted the proposal to create a new 7/12 extract nor was it approved by the applicant. *Prima facie*, the said role is attributed to the then Talathi who made the proposal and the Tahsildar, who had approved the same. The allegation in the FIR that the applicant had assured to certify the mutation entries is *prima facie* shown to be incorrect by the rejection of the mutation entries in respect of the subject land by the applicant, before lodging of the FIR. I am, therefore, inclined to exercise the discretion in favour of the applicant Sayed Husen.

28. So far as the applicants Balkrishna Thakur (ABA/2139/2021) and Kishor Keni and others (ABA/1999/2021) the indictment seems to be that accused No.1 Ghanshyam Bhoir and Nilesh Pawar had introduced these applicants to the first informant. At the same time, the first informant asserted in the FIR that he had known them

from before, as they were working as Estate Brokers. The assertion of the first informant that the applicants also made the representation that accused No.1 Ghanshyam Bhoir was the owner of the lands and documents were genuine and thereby he was induced to enter into the transactions is not, *prima facie*, is not itself sufficient to make the estate agents privy to the alleged conspiracy.

29. In fact, as noted above, Yogesh Kharpatil had allegedly sounded off the first informant about the complications in getting the names of the purchasers mutated to the record of right of the subject land. It would be contextually relevant to note that Ghanshyam Bhoir – accused No.1 asserts that the first informant had asked him to name these applicants, including Sayed Husen, if he wanted to be saved from the allegations of fraud.

30. In any event, the custodial interrogation of these applicants does not seem warranted to facilitate further investigation as no role, apart from being the estate agents, seem to have been attributed to them.

31. Before parting, the Court is constrained to note that it is the purchasers, who are the real victims of the fraudulent transaction and the first informant is the apparent

beneficiary. The role of the first informant in the entire transaction also deserves to be properly investigated, especially in the context of the statement of accused No.1 Ghanshyam Bhoir. The exact amount received by the first informant by selling portions of land to purchasers may be debatable but, indisputably, the first informant has received substantially higher amount than what he claims to have paid to accused No.1 Ghanshyam Bhoir and ultimately the purchasers are left in the lurch.

32. Hence, the following order.

: O R D E R :

- (i)** ABA/1793/2021 stands rejected.
- (ii)** Interim order stands vacated.
- (iii)** ABA/1916/2021, ABA/1999/2021 and ABA/2139/2021 stand allowed.
- (iv)** In the event of arrest of Sayed Husen s/o Sayed Jamaal, the applicant in ABA/1916/2021, Kishor Janardan Keni, Sangram Prakash Gharat, Yogesh Jagdish Kharpatil and Sandesh Bhaskar Bhoir, applicants in ABA/1999/2021 and Balkrishna Mahadeo Thakur, applicant in ABA/2139/2021, in CR

No.209 of 2021, registered with Uran Police Station, they be released on bail on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, each.

- (v) The applicants shall cooperate with the investigation and appear before the Investigating Officer as and when directed.
- (vi) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons acquainted with the facts of the case.
- (vii) The applicants shall regularly attend the proceedings before the jurisdictional Court.
- (viii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]