

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

ANTICIPATORY BAIL APPLICATION NO. 1880 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Uday Jagannath Ghodke ...Applicant
Versus
The State of Maharashtra and anr. ...Respondents

Mr. Harshad Nimbalkar, Senior Counsel a/w Abhishek Arote,
Anup Lahoti and S. M. Sabu, for the Applicant.
Mr. M. G. Patil, APP for the State/Respondent.
Mr. Sunil Patil, a/w Piyush toshniwal, i/b Harshal Patil, for
the Intervener.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 18th OCTOBER, 2023
PRONOUNCED ON: 10th NOVEMBER, 2023

ORDER:-

1. Heard Mr. Nimbalkar, the learned Senior Counsel for the applicant, Mr. Patil, the learned APP for the State and Mr. Sunil Patil, the learned Counsel for the intervener.
2. This is an application for pre-arrest bail in connection with CR No.214 of 2022, registered with Paud Police Station, Pune Rural, initially for the offences punishable under Sections 441, 442, 445, 448, 324, 380 and 504 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

3. The gravamen of indictment against the applicant is that a property situated at Gat No.400 and the house bearing No.297 admeasuring 1000 sq. ft. standing thereon, is the ancestral property of the first informant and his co-sharers. The first informant had been in occupation and possession of the said property. In respect of the subject property proceedings bearing Special Civil Suit No.385 of 1990, Civil Appeal No.136 of 2019 and Special Civil Suit No.355 of 2011 are subjudice. On 26th November, 2020 while the first informant had been to the house of his aunt at Palve (Budruk), District Nashik, the applicant allegedly taking undue advantage of the situation, in pursuance of a conspiracy with his associates, broke open the door of the first informant's house and ransacked the house and committed theft of cash, ornaments and other valuable articles and, thereafter, put his own lock.

4. When the application was listed before the Court on 6th July, 2023 this Court was persuaded to grant interim bail opining *inter alia* that registered Development Agreement and an order passed by this Court in Criminal Writ Petition No.1825 of 2023 dated 7th June, 2023 *prima facie* indicated

that the applicant was found to be in possession of the subject property.

5. The Court was informed the applicant has appeared before the Investigating Officer in terms of the directions contained in the said order.

6. The very allegations in the FIR, *prima facie*, indicate that the dispute between the parties is primarily of civil nature. At best, the applicant can be said to have committed trespass and theft. In the context of the allegations, the major offence seems to be of theft in a dwelling house, which entails punishment which may extend upto seven years. On this score, the discretion can be better exercised in favour of the accused.

7. On the merits of the matter, indisputably, a registered instrument has been executed in favour of the applicant on 25th February, 2008. Special Civil Suit No.66 of 1999 instituted seeking a declaration for cancellation of Development Agreement and Sale Deed came to be dismissed by the Civil Court at Pune by a judgment dated 28th February, 2018. It further appears that the Block Development Officer, Panchayat Samiti, Mulshi, has rendered a decision on 25th April, 2022 that property No.297

admeasuring 1000 sq. ft. referred to in the FIR does not exist in Survey No.400. Thus, the entry of property No.297 be deleted from the assessment list (Form No.8).

8. In the backdrop of the pendency of various proceedings before the Civil and Revenue authorities, it may not be necessary to delve into the submissions sought to be canvassed on behalf of the first informant that bear upon proprietary and possessory title over the subject property. In the context of remit of this application, it would be suffice to note that the custodial interrogation of the applicant is not warranted for further investigation.

9. I am, therefore, persuaded to make the order of interim bail absolute.

10. Hence the following order:

: O R D E R :

- (i) The order of interim bail dated 6th July, 2023 is made absolute on the terms and conditions incorporated therein.
- (ii) In addition, the applicant shall regularly attend the proceedings before the jurisdictional Court.
- (iii) Application stands disposed.

