

Nikita

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

ANTICIPATORY BAIL APPLICATION NO.2307 OF 2023

Pritesh Janardhan Rotkar and Anr. ... Applicants
V/s.
The State of Maharashtra ... Respondent

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Mr. Mahesh Vishwakarma a/w Mr. Amol G. Khillare
a/w Ms. Naina Sharma for the Applicant.

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

CORAM : AMIT BORKAR, J.

DATED : AUGUST 18, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.150 of 2023 dated 30/06/2023 for the offence u/s 420, 465, 467, 470 r/w 34 of the Indian Penal Code, 1860. The applicants are seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973.
2. Based on report of Circle Officer, FIR came to be registered against the applicant alleging that the government property bearing Gat No.89/B (part of Gat No.89/2/A), admeasuring 40 R described by boundaries in the sale deed was described as property No.33 and sold to accused No.3 for valuable consideration.

3. The applicants therefore, filed an application under Section 438 of Code of Criminal Procedure, 1973 before the Sessions Judge which came to be rejected by order dated 3rd August 2023.
4. Learned advocate for the applicant submitted that the applicant had constructed a house on the government property and constructed the building on the said land. The building on the government land was subject matter of sale deed. No right over the land has been conferred on the accused No.3. Therefore, at the most, the applicant can be proceeded for encroachment over the government property.
5. Per contra, learned APP submitted that the land in question has been described in the sale deed by boundaries. The property in the boundaries is the land which is subject matter of sale deed. The said land is actually Gat No.89/B (part of 89/2/B). According to him, property No.33, is shown to be in Gat No.89/2/B. By describing boundaries of Gat No.89/2/B, government land was sold to accused No.3.
6. On perusal of the sale deed, it prima facie appears that the boundaries described are of the land owned by the Government. Construction of a house is over part of the land. Paragraph No. 1 of the sale deed specifically describes boundaries of a land to be a property which is subject matter of sale deed. It is well settled that in case of a conflict between number of property and boundaries, it is the boundaries which would prevail over other descriptions of immovable property.
7. Prima facie, the description of the property appears to be of

a government land. On perusal of the recitals in the sale deed, it appears that the applicant has portrayed himself to be owner of the land. The sale deed transfers ownership rights to accused No.3. Moreover, Gat No. 89/2/B, is shown as property No.33 and sold to accused No.3.

8. Therefore, prima facie case is made out against the applicant.

9. Power under Section 438 being discretionary need not be exercised in favour of person who portrays himself as an owner of a land which undisputedly belongs to the government.

10. The anticipatory bail application stands rejected. No costs.

(AMIT BORKAR, J.)