

AGK

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

ANTICIPATORY BAIL APPLICATION NO.2640 OF 2021

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Deepak Manaklall Katariya

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Manoj Mohite, Senior Advocate, with Mr. Shantanu Phanse i/by Mr. Satyajeet P. Dighe for the applicant.

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

Mr. Nitin Gaware Patil with Mr. Anandmaya Dhorde i/by Mr. Abhishek D. Nagode for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JULY 11, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.181 of 2021 dated 25 September 2021, registered with Gangapur Police Station, Nashik, for an offence punishable under Sections 420, 468, 471 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. The prosecution case, in short, is as under, One Vimalabai Purshottam Pandit is the owner of property bearing Survey No.707 Plot Nos.1, 3, 5 to 8 within the limits of Nashik Municipal Corporation, which is the subject matter of the present anticipatory

bail application. She executed a development agreement and power of attorney for said property in favour of Ashoka Buildwell and Developers Private Limited and one Sadanand Niyogi. Sadanand Niyogi surrendered 50% of shares in favour of Ashoka Builders. Initially, Ashoka Builders was a partnership firm, of which the applicant was a partner who retired from the said firm before the incorporation of the company. The applicant was one of the directors of the said company. Ashoka Buildwell and Developers Private Limited constructed a building known as Ashoka Presidency. Due to a dispute between the partners, the applicant was expelled as a director. According to the complainant, without legal authority, the applicant issued consent for the sale of flats in the building constructed by Ashoka Buildwell and Developers Private Limited and let out two shops on a leave and license basis. These acts of the applicant constitute offences alleged against the applicant.

3. The applicant applied for pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973, before the learned Sessions Judge, which was rejected by an order dated 23 October 2021. The interim protection granted to the applicant on 1 October 2021 stood vacated. Aggrieved thereby, the applicant has filed a present anticipatory bail application.

4. This Court, by order dated 29 October 2021, continued the ad-interim relief granted by the Sessions Judge. Said interim relief is in force til today. It is not in dispute that the applicant has cooperated with the investigation.

5. According to the learned senior advocate appearing for the applicant, Vimalabai Pandit, the registered development agreement and registered power of attorney created the right and interest in the plots in favour of the applicant. Though by public notice, the registered power of attorney was cancelled, according to him, such unilateral cancellation of a registered document creating interest in the property is not permissible in the absence of such declaration being granted by the Civil Court. According to him, the applicant was entitled to 50% of the profit of the partnership firm, which was thereafter incorporated into a company, of which the applicant was a director till 15 March 1995. According to the applicant, he has been illegally expelled without following the procedure under the Companies Act of 1956. The issue of the applicant's expulsion as a director is pending before the competent Court. According to him, the applicant still continues to be a holder to the extent of 30% of the company's shares. According to him, since the expulsion of the application is without following the procedure under the Companies Act of 1956, he continues as a *de facto* director of the company until the competent Court conclusively adjudicates his rights. According to him, leave and license-created right in favour of third parties are of no consequence. Moreover, the documents allegedly executed as a consenting party by the purchasers of premises from Ashoka Builders have no consequence, which does not prejudicially affect the applicant's rights. He submits that custodial interrogation of the applicant is not necessary considering the nature of the dispute pending before the competent authority wherein the parties' rights

shall be conclusively decided.

6. Learned APP has filed a reply affidavit opposing the anticipatory bail application.

7. Per contra, the learned advocate for the informant submits that the Civil Court passed a decree on 29 August 2019 declaring arbitration dated 28 March 1995 as invalid and not binding and further restraining the parties from proceeding on the basis of arbitration. According to him, the applicant impersonated himself as the director of Ashoka Buildwell and Developers Private Limited, though he ceased to be such a director in 1995. The act of execution of leave and license agreement and being a consenting party to the sale deed executed by purchasers from Ashoka Buildwell and Developers Private Limited have caused wrongful loss to the company and wrongful gain to the applicant. Therefore, according to him, custodial interrogation of the applicant is necessary.

8. Having heard learned senior advocate for the applicant, learned APP and learned to advocate for the informant and considering the material on record, prima facie, the following factual scenario emerges:

- a) Vimalabai Purushottam Pandit is the owner of Survey No.707 Plot Nos.1, 3, 5 to 8;
- b) Vimalabai Pandit executed a general power of attorney in favour of the applicant on 31 August 1988;
- c) Under the said power of attorney right to enter into an

agreement with prospective purchasers of flats or premises the developer shall build was permitted to be sold by incurring their own expenses. Various other rights incidental to development work are conferred on the applicant;

d) By a public notice dated 6 July 1995, a general power of attorney was cancelled with effect from 10 April 1994;

e) Disputes regarding the expulsion of the applicant as director and various other rights arising out of affairs of the company and partnership firm, which was the subject matter of the arbitration agreement and consequent subject matter of a suit pending before this Court by way of First Appeal. In the said first appeal decree declaring the arbitration agreement as not binding and restraining the applicant from proceeding with the arbitration agreement dated 29 August 2019, is the subject matter of challenge;

f) In a Civil Suit filed by the informant alleging defamation against the applicant, Civil Court has recorded a finding of invalidity of cancellation of power of attorney executed in favour of the applicant by holding that such unilateral cancellation is not permissible in law;

g) In the said Suit, the informant in the cross-examination admitted that the expulsion of the applicant is without following provisions of the Companies Act, 1956;

h) The sale deeds executed by purchasers in favour of third parties being signed by the applicant as a director of Ashoka Buildwell and Developers Private Limited; The sale deeds contain a clause that the purchasers of Ashoka Buildwell and Developers

Private Limited had already paid consideration to Ashoka Buildwell and Developers Private Limited;

9. The circumstances narrated above indicate a serious dispute pending before this Court by way of a First Appeal regarding inter se rights between the informant and the applicant. The effect of cancellation of power of attorney executed in favour of the applicant by a unilateral public notice needs to be adjudicated conclusively during the trial. The applicant's capacity to enter into transactions for and on behalf of Ashoka Buildwell and Developers Private Limited as a director would be conclusively adjudicated after a pending dispute between the parties in the form of a First Appeal and consequential proceedings if any arise thereafter are decided. Prima facie, it appears that the applicant has entered into a transaction of leave and license and as a consensor under the colour of authority, subject to final adjudication in appropriate proceedings. All these intricate issues need to be adjudicated by the Trial Court during the trial; however, after taking into consideration the cumulative effect of the circumstances narrated above, in my opinion, custodial interrogation of the applicant is not necessary.

10. Moreover, it is not disputed that the applicant is protected from 1 October 2021, and he has cooperated with the investigating agency. Hence, the following order:

a) In the event of arrest of the applicant in connection with C.R. No.181 of 2021 dated 25 September 2021, registered with Gangapur Police Station, Nashik, for an offence punishable under Sections 420, 468, 471 of the Indian Penal Code, 1860, he be

released on bail on furnishing PR. Bond in the amount of Rs.50,000/- with one or two sureties in the like amount;

b) The applicant shall remain present before the investigating officer on 12, 14 and 17 July 2023 between 11.00 a.m. to 2.00 p.m. and thereafter as and when called by the concerned investigating officer;

c) The applicant shall not directly or indirectly make any inducement, threat or promise to any witnesses acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

d) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

e) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer and the Court concerned and shall not change the residence till the final disposal of the case;

11. Learned Senior Advocate makes a statement, on instructions from the son of the applicant who is present in Court, that without prejudice to his rights, during the pendency of the trial, the applicant shall not act or perform any act in the capacity of director of Ashoka Buildwell and Developers Private Limited.

12. The anticipatory bail application stands disposed of in the above terms. No costs.

(AMIT BORKAR, J.)