

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO.2331 OF 2023
WITH
INTERIM APPLICATION NO.3033 OF 2023**

Priyanka Swapnil Vispute and Another ...Applicants
vs.
The State of Maharashtra ...Respondent

Mr. Aniket Nikam i/b. Mr. Amit Icham, for the Applicants.
Mr. R.M. Pethe, APP, for the Respondent/State.
Mr. Sanjay Shinde, for the Intervener.
Mr. D.M. Lokhande, PSI, Yeola police station present.

CORAM : N. J. JAMADAR, J.
DATE : AUGUST 28, 2023

P.C.:

1. Heard the learned counsel for the applicants and the learned APP for the State.
2. This application is preferred seeking pre-arrest bail in connection with C.R. No.138 of 2022 registered at Yeola police station for the offences punishable under sections 166, 167, 465, 467, 471, 472, 475 read with 34 of Indian penal Code, 1860.
3. The genesis of the alleged offences is in the transaction pertaining to agriculture land situated at Gut No. 218A, Pimpalgaon-Jalal, Tal. Yeola, Dist. Nashik. A mutation entry being No. 1472, was made in favour of the applicants. The said mutation entry was cancelled by the Tahsildar. An appeal was preferred by the applicants before the Sub Divisional Officer. In the appeal, by an

order dated 5th April, 2016 the SDO restored M.E. No. 1472. The complainant had preferred appeal against the said order before the Collector on 6th April, 2016. On the very day, the Collector had stayed the order passed by the SDO.

4. It is the allegation of the complainant that on 6th April, 2016 ME No. 1472 came to be restored in the record of right of the subject land without obtaining a certified copy of the judgment and order passed by the SDO by tendering a false and fabricated copy of the order purportedly passed by the SDO. In substance, the applicants had forged copy of the order dated 5th April, 2016 passed by the SDO and used the forged order as genuine to get ME No.1472 restored.

5. Initially, the applicants had preferred an application for pre arrest bail before the Court of Session. Since a statement was made that the prosecution did not desire to proceed against the applicants, the said application came to be disposed as withdrawn by an order dated 9th January, 2023.

6. In the meanwhile, the investigation came to be entrusted to another officer. The said investigating officer desired custody of the applicants for further investigation. Apprehending arrest the applicants again approached the learned Sessions Judge. By an order dated 2nd August, 2023, the learned Additional Sessions

Judge declined to exercise the discretion in favour of the applicants.

7. The learned counsel for the applicants submitted that the fact that the applicant No. 2 had made an application for certified copy is borne out by the documents on record as well as the statements of the officials posted in the office of SDO, who processed the application.

8. The statements of Arun Palvi and Pawan Jagwal recorded during the course of investigation on 8th June, 2022 and 24th June, 2022 indicate that such an application was processed and a certified copy of the order dated 5th April, 2022 passed by the SDO was issued on 6th April, 2016. An endeavour was made on behalf of the complainant to point out inherent discrepancies in the application and the receipt.

9. At this stage, the existence of the order passed by the learned SDO on 5th April, 2016 allowing the appeal preferred by the applicants can not be put in contest. The question revolves around the availability of the certified copy of the said order for being given effect to, on 6th April, 2016 itself.

10. The statements of the witnesses which are referred to in the report initially filed by the prosecution before the Court of Session, vouch for the existence of an application for certified copy and issue of a certified copy, on that day. In the circumstances a prima facie

case is made out to exercise the discretion in favour of the applicants.

Hence, the following order.

ORDER

- 1] Application stands allowed.
- 2] In the event of arrest in C.R. No.138 of 2022 registered with Yeola City police station, the applicants Priyanka Swapnil Vispute and Rameshwar Dada Tanpure be released on bail on furnishing a P.R. bond in the sum of Rs. 30,000/- each with one or two sureties in the like amount.
- 3] The applicants shall cooperate with the investigation and attend Yeola City police station, on every alternate Sunday in between 10 am to 12 noon, for two months.
- 4] The applicants shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses and the persons acquainted with the facts of the case.
- 5] In view of the disposal of the application, the Interim Application does not survive and accordingly stands disposed.
- 6] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)