

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

ANTICIPATORY BAIL APPLICATION NO. 2648 OF 2022

Priya Sadanand Parange ...Applicant
Versus
State Of Maharashtra & Anr. ...Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO. 2649 OF 2022

Hemant Anant Bhagat ...Applicant
Versus
State Of Maharashtra & Anr. ...Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO. 2650 OF 2022

Rachana Kamlakar Thale ...Applicant
Versus
State Of Maharashtra & Anr. ...Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO. 2651 OF 2022

Bharat Tukaram Navale ...Applicant
Versus
State Of Maharashtra & Anr. ...Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO. 2868 OF 2022

Jaywanti Bhagaram Mirgal ...Applicant
Versus
State Of Maharashtra And Anr. ...Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO. 2869 OF 2022

Anil Bhagaram Mirgal ...Applicant
Versus
State Of Maharashtra And Anr. ...Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO. 2870 OF 2022

Sunil Bhagaram Mirgal ...Applicant
Versus
State Of Maharashtra And Anr. ...Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2882 OF 2022**

Kishor Dagadu Mirgal ...Applicant
Versus
State Of Maharashtra And Anr. ...Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2883 OF 2022**

Dnyaneshwar Dagdu Mirgal ...Applicant
Versus
State Of Maharashtra And Anr. ...Respondents

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Mr. Tejas Dande a/w Mr. Vishal Navale, Grishma Lad, Mr. Bharat Gadhavi, Mr. Krupanshu Nandu, Mr. Vikrant Khare, Mr. Chinmay Deshpande, Shama Mulla, Pratik Sabrad, Seema Patil i/b Tejas Dande and Associates, Advocate for Applicants in all ABA.

Mr. Satyavrath Joshi a/w Mr. Anshuman Asare, Mr. Ankur Pahade, Mr. Ajinkya Mirgal, Advocate for the Intervenor/Respondent No.2 in all ABA.

Mr. N. B. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

**RESERVED ON : 10th OCTOBER, 2022
PRONOUNCED ON : 10th JANUARY, 2023**

PC :

1. The applicants are seeking pre-arrest bail in connection with C.R. No. 118 of 2022 registered with Mahad City Police Station on 7th September 2022 for offences punishable under Sections 120-B, 193, 196, 199, 200, 406, 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code.

2. The case of the prosecution is that, the grand-father of the complainant late Mahadeo Babaji Mirgal had three brothers namely Laxman Babaji Mirgal, Pandurang Babaji Mirgal and Devji Babaji Mirgal. All of them were owner of ancestral property situated at Mauje Karanjadi Gut No.778/A/B admeasuring around 6270 square meter. The complainant, his brother, sister, grand-fathers namely Laxman Mirgal, Pandurang Mirgal and their children are the legal heirs to the said property. There was no partition of the property. The said property Gut No.778/A/B admeasuring 6270 square meter was acquired by the Government of Maharashtra during the period of 2005 to 2006. The names of all the legal heirs were not recorded on 7/12 extract. The name of complainant's uncle Dagadu Pandurang Mirgal and Bhagaram Pandurang Mirgal were reflected on 7/12 extract. The surveyor has awarded compensation of Rs.53,995/- for acquisition of the property. Being aggrieved by the quantum of compensation, the complainant's uncle and legal heirs filed suit before the Civil Court at Mahad for enhancement of compensation amount. The said suit was filed in 2006 and it was registered as LAR No. 1/2006. The suit was allowed and vide order dated 11th April, 2017, the compensation was enhanced to Rs. 1,35,56,029/-. Pursuance to the said order, the amount was deposited in the Court on 22nd April 2019. Complainant's uncle Dagadu Pandurang Mirgal, Bhagaram Pandurang Mirgal and their

legal heirs Nathuram Mirgal, Sunil Mirgal and Anil Mirgal initiated the proceeding before the Civil Court at Mahad vide Special Darkhast No.60 of 2019 on 11th February 2019. The legal proceedings were looked after by their advocate Shri. Bharat T. Nawale. Mr. Nawale had been the advocate for representing Dagadu Mirgal and Bhagaram Mirgal since 2006. The application was signed by the advocate Mr. Bharat T. Nawale. Special Darkhast application was bearing thumb impression of Dagadu Pandurang Mirgal and Jayavanti Bhagaram Mirgal dated 11th February 2019. Nathuram Bhagaram Mirgal, Sunil Bhagaram Mirgal and Anil Bhagaram Mirgal had signed the said application. Affidavit was executed in the Civil Court at Mahad by Dagadu Mirgal stating that the contents of the application are true. The affidavit bears the thumb impression of Dagadu Mirgal and it is signed by advocate Mr. Hemant Bhagat. Advocate Mr. Bharat Nawale has signed as Advocate for the applicant therein. The *Vakalatnama* is having thumb impression of Dagadu Pandurang Mirgal. Dyaneshwar Mirgal and Kishor Mirgal were the sons of Dagadu Mirgal and they suppressed the fact that the Dagadu Mirgal is no more. Dagadu Mirgal had expired on 26th January 2019 and his funeral was attended by complainant. His death was registered at Karanjali Gram Panchayat. Thus, with an intention to deprive the complainant of the compensation, the legal heirs of Dagadu Pandurang Mirgal namely Jayvanti Bhagaram Mirgal,

Nathuram Bhagaram Mirgal, Sunil Bhagaram Mirgal, Anil Bhagaram Mirgal, Advocate Mr. Bharat T. Nawal, Advocate Rachna Thale, Advocate Priya Parange and Advocate Hemant Bhagat had acted in connivance inspite of knowing that Dagadu Mirgal had expired. The application was filed on his behalf bearing his thumb impression. Thus, accused has created false document and represented it to be a genuine document in the Court.

3. The applicants had preferred an applications for anticipatory bail before the learned Additional Sessions Court at Mangaon District Raigad. The applications were rejected vide order dated 20th September 2022.

4. The contentions of the applicants in support of grant of pre-arrest bail are as follows:-

(i) The applicants in Anticipatory Bail Application Nos. 2648 of 2022, 2649 of 2022, 2650 of 2022 and 2651 of 2022 are advocates by profession. They are not involved in fabrication of any documents.

(ii) Custodial interrogation of the applicants is not necessary. The applicants are willing to co-operate with the investigation.

(iii) The FIR is false. It has been registered with malafide intention to pressurize the applicants in Anticipatory Bail Application

Nos.2868 of 2022, 2869 of 2022, 2870 of 2022, 2882 of 2022 and 2883 of 2022 to give up their claim towards compensation awarded for acquisition of land.

(iv) The first informant has no connection with the subject land acquisition and execution proceedings. The name of first informant is not mentioned in 7/12 extract of the land, which was acquired as he was not even party in the initial land reference and the enhancement proceedings pursued by beneficiaries. When huge compensation amount was awarded by way of compensation, the first informant claimed his right in the compensation and initiated the criminal proceeding. The FIR is motivated and filed with *malafide* intention to pressurize the beneficiaries and their advocates.

(v) The complainant had filed suit for partition prior to initiation of criminal proceedings, which also shows that there is dispute in respect to shares in the said property.

(vi) The complainant had filed genealogy in RCS No. 98 of 2019 which indicates that he is not from the family of beneficiaries i.e. accused Nos. 1 to 4 and legal heirs of Dagadu Mirgal.

(vii) The enhancement order was passed in LAR No.1 of 2006 on 11th April 2017. The beneficiaries visited the Court on 22nd November 2019. Affidavit was affirmed by Dagadu Mirgal on 22nd

November 2018 which was required for filing execution proceedings. The said affidavit was affirmed in presence of Assistant Superintendent of Mahad Court. All the compliances could not have been done by the beneficiaries on that day and hence it was decided that they would again visit the Court for filing execution proceedings.

(viii) The beneficiaries again visited the Court of Civil Judge Senior Division, Mahad on 24th January 2019. Dagadu Mirgal was aged around 81 years was not in good health and was not in a position to sign the document. It was suggested by accused Nos.1 to 4 and 9 that thumb impression of Dagadu Mirgal be obtained on Court papers. Hence, in the presence of his son and legal heirs of Bhagaram Mirgal, Dagadu Mirgal applied his thumb impression on *Vakalatnama* and execution application i.e. Special Darkhast No. 60 of 2019.

(ix) Dagadu Pandurang Mirgal died on 26th January 2019.

(x) The Civil Judge Senior Division, Mahad is a camp Court and filing of matters is done before the Civil Judge Senior Division, Alibaug as it is the main Court for Raigad District. On 11th February 2019, the execution application was filed before the Civil Judge Senior Division, Alibaug. The advocates were not informed about the death of Dagadu Pandurang Mirgal till 27th June 2019.

(xi) Compensation amount was deposited in the Court of Civil Judge Senior Division, Mahad on 22nd April 2019. The Application was preferred for withdrawing the said amount on 30th April 2019. The application for withdrawal was allowed by order dated 25th June 2019. The order dated 25th June 2019 was communicated to the legal heirs on 26th June 2019. The facts about the death of Dagadu Mirgal informed to the advocates on 26th June 2019. The beneficiaries i.e. accused Nos. 1 to 4 are legal heirs and Dagadu Mirgal were asked to remain present in the Court on 27th June 2019. On the same day, the advocate preferred an application for taking the matter bearing Special Darkhast No.60 of 2019 on board before the court of Civil Judge Senior Division, Mahad. Alongwith the said application, the application for bringing legal heirs of deceased Dagadu Mirgal on record as well as application for condonation of delay was filed. Due to inadvertence, the application were put up by the Judicial clerk in the files bearing Special Darkhast Nos. 61 and 62 of 2019. The said fact is evident from the receipt of certified copies which were issued on 20th September 2022.

(xii) On 6th June 2019, Regular Civil Suit No. 98 of 2019 was filed by first informant seeking partition of acquiring property wherein the application praying for injunction against the withdrawal of amount was preferred. On 13th August 2019 the

complainant preferred an application under Order XXI Rule 99 of Code of Civil Procedure objecting the withdrawal of the amount in favour of beneficiaries in LAR No. 1 of 2006. Vide order dated 30th November 2019, the application was rejected.

(xiii) Since the complainant realized that he is not going to get any favourable orders through Civil Court, he filed complaint before the Mahad Taluka Police Station on 11th December 2019. The police conducted inquiry. The statement of applicants were recorded on 20th December 2019 and 23rd December 2019. Considering the statements, the police did not take cognizance of complaint dated 11th December 2019.

(xiv) The complainant filed another complaint with Mahad Taluka Police Station on 27th April 2020. On 19th May 2020, the Mahad Taluka Police Station replied to the complainant that the cognizance of the said complaint cannot be taken by them and he shall approach appropriate Court for necessary Orders.

(xv) The complainant was not party to land acquisition proceedings until passing of Award dated 11th April 2017 and never made any application prior to 11th April 2017 despite knowing that, the land acquisition proceedings were pending before the Reference Court wherein original claimants viz. Dagadu Pandurang Mirgal and Bhagaram Pandurang Mirgal were rightful claimants as all their

names is reflected in 7/12 extract of the land and notices under the land acquisition Act were issued in their names. Vide judgment and award dated 11th April 2017 the Reference Court enhanced the compensation to the tune of Rs.1,34,56,029/-.

(xvi) Before taking recourse to criminal law, the complainant had availed civil remedies. The suit was filed being Regular Civil Suit No. 98 of 2019 and application under Order XXI Rule 99 of C.P.C. was filed under Special Darkhast No. 60 of 2019 on 13th August 2019 seeking impleadment as a party to the proceedings and objecting the execution of Award dated 11th April 2017. The said application was rejected on 30th November 2019. Thereafter, complaint was filed on 11th December 2019 with Mahad Taluka Police Station. Subsequently the complainant filed private complaint before the Court of learned Magistrate on 13th August 2020 and directions were issued under Section 156 (3) of Cr.P.C.

5. Learned APP submitted that the accused were involved in forgery of document. Custodial interrogation of the beneficiaries is necessary. The record indicates that, Dagadu Mirgal could sign and there was no necessity of execution of thumb impression. The thumb impression was fabricated. Deceased Dagadu Mirgal had expired. It was the responsibility of the beneficiaries to bring this fact to their advocates that Dagadu Mirgal had expired.

6. Learned Advocate for respondent No.2/complainant submitted that the offence is of serious nature. Custodial interrogation of the applicants is necessary. False and fabricated documents were submitted before the Court. The advocates were involved in identifying the thumb impression of the deceased. Gravity of the offence is required to be seen. This is not feet case to grant anticipatory bail. The Affidavit of Dagadu Mirgal is false document.

7. The documents on record would indicate that the complainant was not party to the acquisition proceeding. On inspection, compensation was awarded for acquiring the land. Suit was filed for enhancement of compensation. The Court allowed the enhancement of compensation. Special Darkhast proceedings were initiated for withdrawing the amount. The complainant had initiated Civil Proceeding. It appears that, he could not get relief from the Civil Court. Complaints were filed with Police Station. Inquiry was conducted by Police. Cognizance of complaint was not taken by Police. Complaint was filed before the Court. Directions under Section 156(3) of Cr.P.C. were issued. FIR was registered. Dagadu Mirgal was the senior citizen. He died on 26th January 2019. Dagadu Mirgal and legal heirs Bhagaram Mirgal had filed Special Darkhast No. 60 of 2019. Affidavit was filed alongwith execution application. During the lifetime of Dagadu Mirgal, his affidavit was

affirmed on 22nd November 2018 in presence of Assistant Superintendent of Mahad Court. After learning about the death of Dagadu Mirgal, Advocates representing the accused had advised them to file an application on 22nd June 2019 for taking the matter bearing Special Darkhast No. 60 of 2019 on board before the Court of Civil Judge Senior Division, Mahad. Application was filed for bringing legal heirs of deceased Dagadu Mirgal on record along with application for condonation of delay. The entire matter relates to document. The contention of the applicants is that, filing of execution application, affidavit in support of such an application and the *Vakalatnama* which was filed before the Court on 11th February 2019 was signed by Dagadu Mirgal on 22nd November 2018 and 24th January 2019. The signature and thumb impression of Dagadu Mirgal was made in the presence of legal heirs and beneficiaries of the Award. Money was not disbursed from the Court treasury. Prima facie it appears that the Advocates had acted under the *bonafide* presumption that, Dagadu Mirgal is alive. The applicant Jayavanti Bagaram Mirgal is the legal heir of late Bhagaram Pandurang Mirgal and other beneficiaries are rightful beneficiaries of enhanced compensation. After knowing the fact that Dagadu Mirgal being passed away, the beneficiaries were advised to carry out the death certificate of Dagadu Mirgal and details of his legal heirs. Application for bringing legal heirs had filed on 27th June 2019 along

with Application for condonation of delay. Considering the factual aspects of this matter, the applicants need not be subjected to custodial interrogation. Pre-arrest bail can be granted to the applicants on certain conditions. Hence, I pass the following order:-

ORDER

- i) Anticipatory Bail Application Nos.2648 of 2022, 2649 of 2022, 2650 of 2022, 2651 of 2022, 2868 of 2022, 2869 of 2022, 2870 of 2022, 2882 of 2022 and 2883 of 2022 are allowed;
- ii) In the event of arrest of applicants in C.R. No. 118 of 2022 registered with Mahad City Police Station, the applicants be released on bail on furnishing P. R. Bond in the sum of Rs.20,000/- each with one or more sureties in the like amount;
- iii) Applicants shall appear before the Investigating Officer on 16th 17th 18th 19th and 20th January, 2023 between 11.00 am. to 01.00 pm. and thereafter as and when called for till filing of charge-sheet.
- iv) Applicants shall co-operate with the investigation and in the event they are called upon to submit their specimen handwriting, they shall provide the same to the Investigating Officer.
- v) Applicants shall not tamper with the evidence.
- vi) All Applications stand disposed of accordingly.

(PRAKASH D. NAIK, J.)