

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3421 OF 2022

1.Satish Mahadeorao Uke

2.Pradeep Mahadeorao Uke

.... Applicants

Versus

1. Enforcement Directorate

2. The State of Maharashtra

.... Respondents

Mr. Mihir Desai, Senior Advocate with Mr. Ravi Jadhav, Advocate for the Applicants.

Mr. Anil Singh, Senior Advocate with Mr. Hiten S. Venegaokar, Mr. Aditya Thakkar and Mr. Aayush Kedia, Advocate for Respondent No.1.
Mr. Amit A. Palkar, APP for Respondent no.2-State.

CORAM : SHIVKUMAR DIGE, J.**RESERVED ON : 23rd OCTOBER, 2023.****PRONOUNCED ON : 2nd NOVEMBER, 2023****P. C. :**

1. By this application, applicants are seeking bail in ECIR bearing No.ECIR/MBZO-II/12/2022 made under the provisions of Prevention of Money Laundering Act, 2002 (for short 'PMLA'). The complaint is in respect of four FIRs on account of allegedly commission of scheduled offences under the said FIRs. The following FIRs are registered at Ajni Police Station and Koradi Police Station, Nagpur, against the applicants:

- (i) FIR No. 40 of 2022 dated 23rd January 2022 registered at Ajani Police Station, Nagpur filed by Mohammad Jaffar, nephew of Late Mr. Mohammad Samad, who was owner of the land comprising of 5 acres situated at Mouza Bokhara, Nagpur against the Smt. Khairunnisha & present applicants i.e. Satish Mahadeorao Uke and Pradip Mahadeorao Uke, alleging that they have allegedly usurped the said land by creating fake documents ;
- (ii) FIR No. 175 of 2018 dated 31st July 2018, registered at Ajani Police Station, Nagpur filed by Mrs. Shobharani Rajendra Nalode, Secretary of Aaishwarya Sahakari Grih Nirman Sanstha against the applicants i.e., Satish Mahadeorao Uke and Pradip Mahadeorao Uke & Others, alleging that they have allegedly usurped her society's land situated at Mouza Babulkheda, Nagpur comprising of 1.5 Acres.
- (iii) FIR No. 53 of 2022 dated 31st February 2022 registered at Ajni Police Station, Nagpur, filed by Smt. Khairunisa wd/o Mohd. Samad against the applicants alleging that they have allegedly grabbed her 5 Acre land situated at

Mouza-Bokhara Tah. Nagpur (R).

- (iv) FIR No. 17 of 2007 dated 4th February 2007 registered at Koradi Police Station, Nagpur, filed by Mohd. Rafique s/o Mohd. Isak against the applicants alleging that they have allegedly grabbed his land situated at Mouza Bokhara- Tah. Nagpur (R).

2. It is the contention of learned senior counsel Shri Anil Singh for respondent no.1 that out of four FIRs, the investigation is completed in respect of FIR no. 175/2018 and investigation in respect of remaining three FIRs is still underway and his submissions would be confined to FIR No. 175/2018 for the purpose of present bail application.

3. The brief facts of FIR No. 175/2018 are that, it is registered on complaint of Smt. Shobharani Nalode, Secretary of Aishwarya Sahakari Grih Nirman Sanstha (for short 'said society'). In complaint, she has stated that her late husband established said society in 1984. The said society has purchased 1.5 acre land from khasra no. 82/2, situated at mouze Babulkheda, Nagpur from land owners Shri Vithal Dhawale, Smt. Vimal Ghodmare, Kamalbai Kuhite and Lilabai Thakre

by sale deed dated 29th November, 1990. Thereafter, the said society purchased another three plots of agricultural land under registered sale deeds executed on 22nd Feb., 1991, 19th Feb. 1992 and 13th Jan. 1994, totalling around 3.25 acres from the above land owners. The mutation entry was taken in 7/12 extract. In year 2001, the applicants raised dispute regarding 1.5 acre land purchased by the society and started to obstruct the society members to enter in the said land. The applicants erected a wall on some part of that land and erected a gate and locked it. Hence, the complainant had filed an application before the office of Land Records, Commissioner of Police, Deputy Commissioner of Police, Nagpur. When the complainant came to know that the applicants have purchased the said 1.5 acre land by way of sale deed from original land owners, she took out a copy of registered sale deed. She came to know that the said land was purchased through Power of Attorney (for short 'POA'), but copy of the said POA was not attached to the sale deed. She has filed a suit against the applicants before the Senior Civil Court for cancellation of sale deed of subject land, which is pending. In complaint, it is stated that no cognizance of her earlier complaint was taken by the police.

4. I have heard learned senior counsel Shri Mihir Desai for the applicants, learned senior counsel Shri Anil Singh for respondent no.1

and learned Additional Public Prosecutor Shri Amit Palkar for the respondent/State.

5. Prosecution's case revolves around alleged POA given in favour of Chandrakant Matte by original land owners of Gat No. 82/2, situated at mouze Babulkheda, admeasuring 0.69 Ares/1.5 acre (for short 'subject land'). It is alleged that on the basis of said POA, subject land was purchased by the applicants by sale deed dated 16.03.2001. It is alleged that the applicants have taken illegal possession of subject land. Admittedly, copy of the said power of attorney is not on record. It is alleged that Smt. Nalode's society has purchased subject land in year 1990, by way of sale deed from original land owners. The mutation entry was taken in 7/12 extract.

6. It is contention of learned senior counsel Shri Desai for applicants that at the time of registration of sale deed of subject land, original POA was shown to then Joint Sub Registrar. At that time, as per the Government guidelines, copy of POA was not necessary to be attached with the sale deed. Learned senior counsel further submitted that the documents in respect of said power of attorney are destroyed in the incident dated 08.06.2016, when several tonnes of iron rods,

iron pipes, iron sheaths, wooden bottoms etc. were dropped on the roof of applicant no.1's office and he escaped with his life just in time as he had left the office few moments prior. Pursuant to this incident, most of the documents of applicant no.1, which were in his office were destroyed. Learned senior counsel further submitted that sale amount of subject land was given through cheques to land owners. It is contention of learned senior counsel for respondent no.1 that the original land owners never issued POA in favour of Shri Matte and the said POA was false and fake. The said person is not in existence. It appears from record that the statements of original land owners Shri Vitthal Dhawale, Smt. Vimal Ghodmare, Kamlabai Kuhite and Lilabai Thakre are recorded under the provisions of PMLA. They have stated that, they had never issued power of attorney for sale of subject land in favour of Chandrakant Matte nor they have received any sale amount in respect of subject land. A copy of POA is not attached with sale deed. The applicants must have the original POA as they are claiming ownership of subject land on the basis of sale deed executed through POA. It is the contention of learned senior counsel for the applicants that said POA was destroyed in the incident. In my view, the alleged incident had happened in the year 2016. Complainant Smt. Nalode has filed suit against the applicants for declaration and permanent

injunction in respect of subject land in the year 2008. The applicants have not produced copy of POA in said proceeding. If the applicants state that their POA destroyed in year 2016, question remains why it was not filed before the Civil Court in pending proceeding. It creates doubt about execution of POA, as original land owners have denied the execution of POA in favour of Shri Matte. Moreover, said POA was not registered. There was transfer of immovable property. Without registering POA, the alleged sale deed was executed. No where in documents produced on record the date of POA is mentioned. The affidavit filed by Shri Matte before the Executive Magistrate is dated 16.03.2001. It is the same date of registration of sale deed. Detail address of Shri Matte is not mentioned in sale deed. Considering above facts, it shows *prima facie* case against the applicants.

7. It is prosecution's case that part of subject land belongs to Nagpur Improvement Trust (NIT) and applicants by preparing false and fabricated documents and making false signatures, sold some portion of that land.

8. It is contention of learned senior counsel for applicants that the allegations in respect of NIT is not part of FIR No.175 of 2018. The

allegations in respect of NIT can't stand together with allegations in FIR No. 175/2018. It appears from record that in investigation of Crime No. 175/2018, it revealed that out of total inherited land of original land owners, Government had acquired 2 acres (approximately) land under the Urban Land Ceiling Act (for short 'ULC Act'). The applicant no.2 had approached original land owners to get the land acquired under ULC Act. He was ready to purchase the said land. Accordingly, for the purpose of clearing the land and going ahead with the sale, land owners had given power of attorney in favour of Shri Babarao Rambhau Barse Patil and in exchange received two cheques of Rs.1.5 lakhs each, which were dishonoured. Due to dishonour of cheques, the land owners withdrew POA given to Shri Barse Patil. The withdrawal agreement was signed by applicant no.1. Thereafter, the said land was purchased by applicants through POA Shri Matte. The land owners have denied issuance of POA in favour of Shri Matte.

9. In the statement of witness Lalit Raut, Building Engineer in NIT, he states that most of the property shown in map of Mahapushp Creations (owner of it, is applicant no.1) was overlapping with the properties of NIT. He further states that as per the records, no one had

taken any permission regarding NOC with respect to the plots, neither for their purchase nor for sale. In the statement of witness Sujata Gandhe, Deputy Collector and Land Acquisition Officer, Collector Office, Nagpur, she states that survey No. 82/2 was allotted to NIT vide order dated 21st September, 1987 and applicant no.1 had given letter dated 8th May, 2000 through Mahapushp Creations for measurement of the retainable area. She also states that there was only one permission, which was for carrying out measurement of the land sought by applicant no.1. She further states that there was no permission/NOC to Mahapushpa Creation of applicant no.1 for selling the said land. In statement, witness Sanjay Singh Gauram, Additional Collector, Urban Land Ceiling, Nagpur, states that he had issued one NOC to applicant no.1 for measurement of land admeasuring 1307.79 sq. Mtrs. He states that he has never issued second letter permitting the sale and the signatures on second letter are false and forged and did not belong to him. In the statement of witness Prashant Bongirwar, he states that he has purchased 2095 sq.mtrs. land from the applicant no.1 by way of sale deed. Applicant no.1 had shown him letter dated 30th June, 2000, issued by the Additional Collector, ULC, Nagpur for sale of retainable land, admeasuring 1307.79 sq. Mtrs. and he has paid total consideration of Rs.1.98

Crores, out of which Rs.1.26 Crore by way of cheque to applicant no.1 and Rs.0.72 crore by way of cash to applicant no.2. He further states that applicant no.1 had promised him that he would clear the title of 2095 sq. Mtrs. of land within two years. He further states that the map with the letter and one with the sale deed was different. No POA, allegedly given by original owners in favour of Chandrakant Matte, was with the sale deed. He further states that the Sale Deed entered into was much lesser than the Ready Reckoner value of Rs.3 crore.

10. From the statement of these witnesses, it appears that the applicants have sold the property belonging to NIT, illegally by preparing false and forged documents and making false signature. Though, there is no reference of these allegations in FIR no.175/2018, as per Section 3 of PMLA, the act of the applicants is continuing activity and applicants have taken illegal possession of subject land. A separate FIR is lodged against the applicants. Moreover, it appears from record that applicants had given letter for measurement of land in the year 2000 and they have allegedly purchased the subject land through POA in 2001. Earlier, POA issued in favour of Shri Barse-Patil was withdrawn by the land owners and applicant no.1 was aware about it. It shows that before purchase of subject land, the applicants

had given letter for measurement of land, which was not belonging to them.

11. It is the contention of learned senior counsel for the applicants that civil suit is filed by complainant - Secretary of Aishwarya Society against the applicants for cancellation of sale deed. It is pending before the Civil Court. In cross-examination, the complainant has stated that she is aware that the applicants have purchased land adjacent to their land. Nature of dispute is of civil nature. The trial Court, in various orders, has observed that the dispute between the applicants and said society is of civil nature and complaint against applicants has been filed after ten years of filing suit. It appears from record that on the basis of FIR no. 175/2018, ECIR is filed against the applicants and in investigation it revealed that the applicants have prepared false POA of Chandrakant Matte. On the basis of POA, sale deed of subject land was executed in their favour and they have sold plots of NIT by preparing false and forged documents and by making false signature of concerned authority. These acts of the applicants cannot be considered as civil dispute. The delay in lodging FIR, at this primary stage, cannot be a ground to grant bail to the applicants when there is strong *prima facie* case against the

applicants.

12. It is the contention of learned senior counsel for the applicants that the value of subject land is below Rs. One crore. In the statement of witness Prashant Bongirwar, he states that he had purchased some portion out of subject land for Rs.1.98 Crore and out of that amount, he had given Rs.1.26 Crore by way of cheque to applicant no.1 and Rs.72 lakhs by way of cash to applicant no.2. It appears from the documents produced on record that value of subject land is more than Rs. One crore.

13. It is the contention of learned senior counsel for the applicants that the alleged transaction was of year 2001. At that time, PMLA was not in force and was not even an Act. In terms of Article 20 of the Constitution of India, no one can be convicted for an act which was not an offence at the time of its commission. Therefore, the alleged offence under PMLA could not have been committed. In my view, as per Section 3 of PMLA, money laundering is continuing activity. The same cannot be curbed or curtailed depending upon predicate offence alone. It is alleged that the applicants have taken forceful possession of subject land and still it is in their possession.

Thereafter, in the year 2012, the applicants have sold portion of said land to Prashant Bongirwar. It shows that provisions of PMLA are applied appropriately against the applicants.

14. Learned senior counsel for the applicants has relied on following judgments :

1. ***Nikesh Tarachand Shah versus Union of India and anr.*** reported at (2018) 11 SCC 1.
2. ***Vijay Madanlal Choudhary and ors. versus Union of India and ors.*** in Special Leave Petition (Cri) No.4634 of 2014. = (2021 SCC Online SC 3286)
3. ***Pankaj Bansal versus Union of India*** in Criminal Appeal Nos. 3051-3052 of 2023 passed by Hon'ble Supreme Court on 03.10.2023.

15. I have gone through all the case laws. The facts of cited cases and the case in hand are different. In the present case, it appears from record that POA, on which basis the applicants are claiming ownership of subject land, is neither produced on record nor produced in the proceeding pending before civil court. POA was not registered though there was transfer of immovable property. It is prosecution's case that POA Shri Matte is not in existence and he is a fictitious person. It appears that there is substance in said contention as Shri

Matte's address in sale deed is missing and he could not be traced by the police. Moreover, it appears that subject land was already purchased by the said society in the year 1990 by way of registered sale deed. The applicants have taken illegal possession of subject land. They have erected wall on it and have sold some portion of it. Some portion of subject land belongs to NIT. The applicants, without taking permission from NIT and by preparing false documents and making false signature, have sold some land of NIT. All these acts of the applicants show strong *prima facie* case against them. In view of above, I pass the following order :

ORDER

The bail application is rejected.

(SHIVKUMAR DIGE, J.)

P.P.Diwale, PS