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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 1342 OF 2024

Ram @ Rameshwar s/o Shripatrao Chalak .. Applicant

versus

The State of Maharashtra .. Respondent

Mr. R. S. Deshmukh, Senior Counsel instructed by Mr. N. R. Thorat along with Mrs. M. S. Deshmukh and A. S. Deshmukh, Advocates for the Applicant.

Mr. P. K. Lakhotiya, APP for the State.

CORAM : R. M. JOSHI, J.

RESERVED ON : 17th OCTOBER, 2024.

PRONOUNCED ON : 21st OCTOBER, 2024.

ORDER :

1. Division Bench of this Court, while hearing Writ Petition No. 4032/2021, came across a case wherein a bogus land acquisition award is prepared and its execution is sought for Rs. 2,03,34,665/-. The Division Bench of this Court in the said Writ Petition has passed the following directions :-

i) The writ petition is dismissed with total cost of Rs.1,00,000/- (One Lakh only) to be borne by each of the

petitioner in equal proportion, else to be recovered as arrears of land revenue.

ii) The District Collector, Beed shall forthwith take steps to lodge FIR/police report through Authorized Officer not below the rank of Land Acquisition Officer against the petitioners, erring officers and other culprits responsible for manipulation/fabrication of documents like; land acquisition award, gazette notification, correspondence between various offices, that has been relied for raising/prosecuting false claim for compensation and report compliance to this Court within three (03) months from the date of this order.

iii) The Registrar (Judicial) of this Court, himself or through his nominee, is directed to file complaint with Jurisdictional Magistrate, against petitioners (independent of prosecution directed under clause (ii) of this order) for offences committed on record of this Court, covered under Section 195(i)(b) of CrPC as per observations made in this order and report compliance to this Court within three months from date of this order.

2. Pursuant to the said order, First Information Report No. 615/2023 came to be lodged on 02.12.2023. In nutshell, it is stated in the First Information Report that in land acquisition proceeding No. 134/1997, a letter was received by stating that the fund of

Rs. 2,03,34,665/- was received however, no original file or documents regarding the said proceedings was mentioned in the said correspondence. A suspicion was therefore raised with regard to the veracity of the said communication. An inquiry was conducted therein in which it was found that at no point of time measurement of Uthala Bk. Minor Irrigation Right Canal, Arvi, was ever done and therefore, it was intimated by the office of the land records that copy of the said joint measurement map cannot be supplied. The office of Deputy Collector and Government Printing and Stationery also informed that the resolution was forged. The beneficiaries of the said award preferred Writ Petition No. 4332/2021 making grievance that inspite of passing of the award, the amount of compensation has not been paid to them. In this petition, the Division Bench of this Court passed above order and First Information Report came to be lodged. By letter dated 24.03.2021, the office of SDPO informed to the investigating agency that the letter dated 09.09.2019 was not issued by the said office and the funds were not demanded.

3. Applicant is an Advocate by profession. Learned Senior Counsel appearing on his behalf submitted that the Applicant has no concern with the preparation or procurement of the alleged bogus

award. According to him, being a lawyer he has simply collected the documents from the Petitioners and brought the Petitioners to the Advocate who has caused appearance in the High Court. It is his submission that the order passed by the Division Bench does not indicate any attribution against him and that no action under Section 340 of Code of Criminal Procedure read with Section 195 was initiated against him, though such action was initiated against the Advocate appearing before the High Court and ultimately, the said proceeding was dropped even against him. It is his further submission that this Court in said writ petition has issued specific direction for taking action against all erring persons including Government officials. However, apparently, the investigating agency is trying to shield the Government officials and Applicant is made a scapegoat. He has also made grievance that even the office of Collector has not conducted proper inquiry into the matter and that the whole endeavour of the said office was to save skin of the Government employees. By referring to the proceeding for anticipatory bail filed by the co-accused, it is submitted that the said co-accused is the petitioner in the original petition and that by playing mischief he has obtained interim protection from this Court and thereafter sought regular bail from the Trial Court. It is his

submission that the Petitioners have supplied copy of the award and relevant documents to the Applicant and that since now action is contemplated against them, entire blame is sought to be put on the Applicant. It is his further submission that in any event, since it is a case based upon documentary evidence, question of custodial interrogation of the Applicant does not arise. It is submitted that any stringent condition may be imposed including direction to the Applicant to cooperate in the investigation which would suffice the purpose of effective investigation. In response to the contention of learned APP with regard to the statements of co-accused being sought to be relied upon, it is his submission that the statements of co-accused are not admissible in evidence. It is his submission that in any case, the statements are required to be ignored for the simple reason that these persons are interested to save themselves from the action under law hence the Applicant is blamed for all acts which are not done by him. Finally, it is submitted that Applicant is an Advocate by profession. He is not likely to flee from justice and hence, his liberty be protected.

4. Learned APP opposed the application by contending that since the Applicant did not file any Vakalatnama in the proceeding

before the High Court, question of initiating any action against him under Section 340 of Code of Criminal Procedure did not arise. It is his submission that prima facie, there is more than sufficient evidence before this Court to come to the conclusion that the Applicant is involved in this crime. He drew attention of the Court to the police papers which indicate statements of co-accused as well as other witnesses which, according to him, are sufficient to show that Applicant is the person who has played active role in preparation of bogus award and to put the same for execution. According to him, the statements of witnesses clearly indicate that Applicant is the one who used to obtain signatures of the villagers on blank Vakilpatra and thereafter he used to file the proceeding by seeking percentage of compensation as fees. He further drew attention of the Court to the order passed by the Civil Judge Senior Division, in LAR No. 450/2015 wherein after conducting an inquiry it is specifically held by the said Court that the present Applicant has fabricated and manipulated the record of the said proceeding. In response to this submission, learned Senior Counsel for the Applicant has brought to the notice of this Court order passed by this Court in First Appeal No. 369/2020 dated 07.03.2022 wherein the said order dated 02.03.2022 passed in LAR No. 450/2015 is stayed. Learned APP

further argued that two persons i.e. Hanuman Pawar and Jalinder Ware are close relatives of the Applicant i.e. they are the husbands of real sisters of the wife of Applicant. It is submitted that the award is passed in respect of village Arvi whereas there is evidence on record to indicate that no land stands in the name of these two persons. Instead of the said fact, their names are included in the award and compensation claimed by them. This according to him, is more than sufficient evidence to show that Applicant is actively involved in the preparation of award. Finally, he has drawn attention of the Court to the order passed in LAR No. 22/2015 wherein direction was issued to the Superintendent of the Court to file report in respect of manipulation in the award filed before the Court. It is his submission that though the offence has been registered against unknown person, it cannot be a coincidence that the present Applicant was the Advocate of claimants therein. It is submitted that the offence is serious in nature and in order to unearth the truth, limited custody of the Applicant under the protection order of this Court will not be sufficient for effective investigation and as such this being a case of custodial interrogation, application be rejected.

5. The order passed by Division Bench of this Court in Writ Petition No. 4032/2021 sufficiently demonstrates seriousness of crime as this is a case wherein a bogus award is prepared for a sum of more than two crores and the same is put for execution. Now, there is no dispute about the fact that the award which was sought to be executed through writ petition, is bogus. However, the parties are so audacious that petition is before this Court to seek direction to the authorities for release of compensation. It is only because Division Bench of this Court could find out that it is a case of bogus award, a cognizance thereof was taken and actions were initiated under Section 340 of the Code of Criminal Procedure as well as direction was given to file First Information Report. The endeavour of this Court in issuing above noted direction was not only to bring to the books persons involved in the present crime but the seriousness of the crime which was taken into consideration so also possibility of similar bogus awards could have been prepared and the public exchequer is mis-appropriated.

6. Needless to say that such mis-appropriation is impossible to occur without collusion with some of the Government officers related to the said work. In the instant case itself, the bogus award is

circulated and execution thereof is sought. Not only that the award which in fact was not in existence, compensation amount was sanctioned. It is painful to note that there is substance in the contention of learned Senior Counsel for the Applicant that the manner in which investigation has been done in this case creates a suspicion that the investigating agency is trying to shield some persons obviously Government officers and as such no effective investigation has been done in this regard till date. Mere addressing letters to the concerned department seeking information can never be said to be a job of investigating agency, more particularly, when High Court in no uncertain terms has flagged the illegalities and creation of bogus award. However, now a question arises as to whether the Applicant would be entitled to take benefit of lethargy or even assumed deliberate act on the part of the investigating agency in not conducting effective investigation into the role of Government authorities and to take benefit thereof and the candid answer thereto is in negative.

7. Insofar as present Applicant is concerned, there are statements of witnesses on record to indicate that the Applicant used to visit various villages including the village in question and used to

obtain signatures of the agriculturists on blank papers and blank Vakalatnama. There are statements of co-accused who also state so. However, the said submission being ex-culpatory, this Court is not inclined to place reliance on the same even at this stage. However, there is an affidavit filed before this Court by one of the Petitioners stating that Applicant has obtained signatures on blank papers and Vakalatnama and that the Petitioners were not having any knowledge of the proceeding except that they were told that they are entitled for more compensation in respect of the lands which were already acquired and compensation was paid therein. As far as this affidavit is concerned, this Court finds no impediment in placing reliance on the same for the reason that the said statement is made on oath and that affidavit is filed before this Court. This statement being not made before the police officer and since the said affiant was not an accused at that point of time, there is no embargo in considering the said statement.

8. There is no denial of fact that Applicant had appeared in the earlier proceedings in respect of payment of compensation of the lands of some of the Petitioners. It is about the same acquisition of land in respect of which bogus award is prepared and Applicant is

concerned with said proceeding. It is pertinent to note that the names of Hanuman Pawar and Jalinder Ware (close relatives of Applicant) appear in the said award when they had no land in the said village. It is sought to be canvassed on behalf of the Applicant that names of these two persons did not appear as Petitioners in the order of the Division Bench. However, perusal of the record and proceeding of the said Petition shows that a Civil Application bearing No. 11152/2021 was moved seeking direction to deposit amount of compensation on the basis of award. In the said application, names of these two persons are mentioned as Petitioners. Thus, it cannot be said that there is no substance in the contention of learned APP.

9. Moreover, in LAR No. 450/2015, there is finding recorded by the Civil Judge Senior Division with regard to fabrication of documents and record of the Court by the Applicant. Though said order has been stayed by this Court with observation that the Applicant was not heard before passing the said order, as a matter of fact, the said order has not been set aside by any Competent Court till date. There is no co-incidence if the incidents occurred repeatedly in same manner. In another matter, wherein the Applicant was appearing for claimants, i.e. LAR No. 22/2015, a direction is given by

the Court for registration of First Information Report in respect of fabrication/interpolation in the award filed before the Court and the Applicant is the Advocate of the said claimants. Without attributing anything specifically against the present Applicant, insofar as the said case is concerned, suffice it to say that there is material before this Court in order to prima facie hold that in case where Applicant appeared as an Advocate, there is manipulation of record. Considering material on record it cannot be said that Applicant has no concern with the bogus award and also preparation thereof. The entire material on record prima facie shows that Applicant is not alien to this crime.

10. Perusal of the Petition in W.P. No. 4032/2021 shows that it was the case of the Petitioners that by way of private negotiation, the Superintending Engineer, Circle Parali had published the said land acquisition award. It is further claimed that the said award was communicated to Sub Divisional Officer Beed vide letter dated 09.09.2019. Pursuant to the same, the Executive Engineer had forwarded the proposal to the State Government for requesting the money for disbursement of compensation. It is contended in the said Petition that the Executive Engineer, Beed is not disbursing the

amount to the Petitioners inspite of various requests made by them. These averments clearly show that even the Government Officers at a stage of procurement of money from the State Government for payment of compensation to the Petitioners have not bothered to verify as to whether the award was a genuine one or otherwise. Had the Division Bench of this Court not taken up the said issue, this issue would have been deep buried and could not have seen the day light. This Court, therefore, finds every reason to accept the contention of learned counsel for the Applicant that not only the investigating agency but the administration is also trying to save the Government employees.

11. Here it is a case wherein this Court could find out the mischief of preparation of bogus award and mis-appropriation of the public exchequer to the extent of huge amount. After such observations are made by Division Bench of this Court, a minimum expectation from the concerned office head was to atleast make some inquiry into the previous/other cases of payment of compensation even randomly only just to be sure that in no other case such bogus awards are used to siphon public money. From the material placed before this Court, it does not appear that even such exercise is done

by the concerned authority. Moreover, this Court also finds substance in allegation of learned Senior Counsel for Applicant that there is no proper investigation of crime and attempt to protect Government authorities is apparent. If we expect that it is duty of the High Court only to be alert and seek action against illegalities and mis-appropriations and other limbs of the system do not respond or wish to take serious steps to curb the same, then no one can save common man. At any cost, the purity of administration is to be maintained and those who meddle with the same for ulterior motive must be brought to the book and punished in accordance with law. Suffice it to say that in the instant case, the concerned administrative officers or even investigating agency seems least serious in performing their mandated duties/responsibilities. This Court, therefore, finds it necessary to send copy of this order to the Chief Secretary and Home Secretary of State of Maharashtra with a hope that these authorities will be sensitive enough to look into the matter and issue appropriate direction and further make sure that proper and effective investigation is done in this crime. Learned Registrar (Judicial) to forward the copy of this order to the said authorities for compliance.

12. Suffice it to say that this is a serious offence and as it involves preparation of bogus award, unless all concerned whose participation is apprehended are taken into custody, no effective investigation can be done. As far as present Applicant is concerned, there is more than prima facie evidence to accept his involvement in this crime and as rightly pointed out by learned APP, unless his custodial interrogation is granted that too without protective umbrella of the order of this Court, it will not be possible for the investigating agency to unearth the truth. Merely because Applicant is an Advocate by profession, he will not get any privilege or immunity from arrest. Needless to say that whenever arrest is imperative for effective investigation of the crime and where the Court finds that arrest made is not malafide or to humiliate concerned person, the law permits custodial interrogation of such person.

13. In view of above discussion, application is rejected.

(R. M. JOSHI)
Judge