

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

Anticipatory Bail Application No. 1715 of 2024

1. Uttam Gana Patil
Age 71 years, Occ. Agriculturist,
R/at. Nilje, Taluka Kalyan,
District Thane.

2. Sudarshan Rohidas Patil
Age 32 years, Occ. Agriculturist,
R/at. Nilje, Taluka Kalyan,
District Thane.

... Applicants

Vs.

The State of Maharashtra
(Through Manpada Police Station,
District Thane)

... Respondent

Mr Pandit Kasar, for the Applicants.
Mr CD Mali, APP for the Respondent – State.
Ms Rekha Musale, for the Intervenor.
PI DK Gund, Manpada Police Station, present.

**Coram : R. N. Laddha, J.
Date : 27 June 2024**

P.C.

By the present application, the applicants seek anticipatory bail in connection with CR No.569 of 2024, registered at Manpada Police Station, Thane, for offences punishable under Sections 420, 406, 467, 468, 504, 506 read with 34 of the Indian Penal Code.

2. The complainant, in his FIR, states that his grandfather, Pandu Rama Khutarkar, was a protected tenant of the land

bearing Survey No.38/7/A, Old Survey No.40/7 (part) admeasuring 30.5R, situated in village Nilje, Kalyan, Thane, and held a certificate under Section 32M of the Maharashtra Tenancy and Agricultural Lands Act. Following Pandu Rama Khutarkar's demise, the complainant's father, Ambu, continued to possess the land as a protected tenant. The complaint relates to mutation entry No.2869, which concerns the removal of encumbrances from the 7/12 extracts and the disbursement of land acquisition compensation totalling Rs.17 Crores in favour of the applicants. The complainant as a legal heir of Ambu contested the award by filing a writ petition. In the writ petition, the High Court issued an order preventing the accused from collecting the remaining compensation amount.

3. Further, it is alleged that despite the demise of the complainant's father, Ambu, on 7 September 2011, the applicants managed to remove tenancy encumbrances using forged and bogus documents. They obtained mutation in their names based on these documents and collected a substantial portion of the compensation. The mutation No.2869 dated 2 June 2023 and the fraudulent removal of the encumbrances were carried out by the applicants. To achieve this, the applicants deposited a purchase amount of Rs.1,121/- on 28 February 2023, falsely representing Ambu Khutarkar as alive. Additionally, one of the applicants assumed false identity of the

complainant's father while the other provided the identification.

4. Mr Pandit Kasar, the learned Counsel, appearing on behalf of the applicants, submits that a thorough review of the FIR indicates that it solely relates to a civil dispute. The writ petition is pending before this Court. Given this context, there appears to be no justifiable reason for the complainant to file an FIR against the applicants. All relevant documents are already in the complainant's possession, and nothing needs to be recovered from the applicants. Furthermore, the applicants had previously submitted an application for the removal of encumbrances with the revenue authorities. However, the relevant record is not available with the department.

5. Conversely, Mr CD Mali, the learned Additional Public Prosecutor representing the respondent/ State, submits that the applicants have fabricated false documents to collect a huge compensation of Rs.17 Crores. The applicant No.1 on 2 March 2023, applied to the Tehsildar's office to transfer the rights of the land in favour of Ambu Pandu Khutarkar and applicant No.2, as a witness, identified Ambu Pandu Khutarkar. Ambu Pandu Khutarkar, however, expired on 7 September 2011. The offence is serious, and the investigation is in progress. The applicants' custodial interrogation is necessary to uncover the persons involved in this crime.

6. Ms Rekha Musale, the learned Counsel, appearing on behalf of the complainant/ intervenor, submits that the land is in the complainant's possession. The applicants have entered their names in the revenue records of the land by forging documents. The State Government has acquired the land and the applicants are direct beneficiaries of Rs.6 crores. The learned Counsel contends that the applicants have not produced any documents showing the transfer of title except the revenue records obtained by forged documents. The file in respect of the documents allegedly filed by the applicants is also missing. The complainant's title is no way challenged by the applicants. This shows that the applicants have no right, title or interest in the land and have adopted illegal means to grab the complainant's property.

7. It is a settled position in law that the power to grant anticipatory bail is extraordinary. While it has been acknowledged in many instances that regular bail is considered a general rule, the same analogy cannot be applied to anticipatory bail. The decision to grant anticipatory bail must be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. A straight jacket formula cannot be applied. This power must be exercised with caution, as granting protection in serious cases could potentially lead to a miscarriage of justice or hinder the investigation by allowing

tampering or destruction of evidence. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in *Shrikant Upadhyay & Ors. v. State of Bihar & Anr.*¹

8. After carefully considering the arguments of the learned Counsel for the parties and perusing the relevant documents it is clear that there is no disagreement regarding the date of the complainant's father's death. The record indicates that although the complainant's father passed away on 7 September 2011, in 2023, applicant No.2 identified the person impersonating as the complainant's father. The applicant No.1 deposited the amount claiming the complainant's father to be alive. The record reveals that the complainant had raised an objection before the land acquisition officer for disbursing the compensation amount in the applicants' favour. However, the dispute was not referred for adjudication to the Court and the land acquisition authority chose to disburse the compensation amount to the applicants. As a result, the complainant was compelled to file a petition before the Division Bench of this Court. Despite the presence of the encumbrances listed in the name of the complainant's grandfather and father, the applicants obtained a certificate under Section 32-G.

9. It further appears that the applicants are the recipients and beneficiaries of a huge compensation amount without

¹ 2024 SCC OnLine SC 282.

establishing the transfer of rights from the complainant's predecessor-in-title to them. Also, the applicants have not challenged the order dated 23 November 1961 which has now attained finality. Notably, the thumb impression and photographs of the relevant persons were not affixed on the registered document. There is material available on record to indicate the involvement of the applicants in the crime warranting their custodial interrogation. Given the gravity of the offence and to uncover the persons involved in the crime, a detailed investigation is required to be carried out. Resultantly, the application stands rejected.

[RN Laddha, J.]