



Ravindra Bhaskar Deshmukh &
Hemant Bhaskar Deshmukh
Vs. The State of Maharashtra
ABA1319&1322.2024

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

ANTICIPATORY BAIL APPLICATION NO. 1319 OF 2024

. Ravindra Bhaskar Deshmukh,
Age: 71 Years, Occupation: Business,
R/o.: Shivaji Road, Opposite Nagarpalika,
Dondaicha, Tq.: Shindkheda,
District: Dhule .. Applicant

Versus

1. The State of Maharashtra
2. The Superintendent of Police, Dhule ..Respondents

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WITH
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ANTICIPATORY BAIL APPLICATION NO. 1322 OF 2024

. Hemant Bhaskar Deshmukh,
Age: 86 Years, Occupation: Agriculture &
Social Worker, R/o.: Shivaji Road,
Opposite Nagarpalika, Dondaicha,
Tq.: Shindkheda, District: Dhule .. Applicant

Versus

1. The State of Maharashtra
2. The Superintendent of Police, Dhule ..Respondents

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Advocates for Applicants:
Mr. Shirish Gupte, Senior Advocate i/b. Mr. Abhay D. Ostwal &
Mr. Joydeep Chatterji
APP for Respondent/State: Mr. A. B. Girase

Advocates for Assit to PP: Mr. Rajendrreea Deshmukkh, Senior Advocate a/w. Ms. Meenal S. Deshmukh i/b. Mr. D. M. Shinde

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CORAM:	ARUN R. PEDNEKER, J.
Date:	28.01.2025

ORDER:

1. Heard Mr. Shirish Gupte, learned Senior Advocate instructed by Mr. Abhay D. Ostwal, Mr. Joydeep Chatterji, learned counsel for the applicants, Mr. A. B. Girase, learned Public Prosecutor for the Respondent / State, Mr. Rajendrreea Deshmukkh, Senior Advocate a/w. Ms. Meenal S. Deshmukh instructed by Mr. D. M. Shinde, learned counsel for assist to Public Prosecutor.

2. The applicants have approached this Court apprehending arrest in connection with Crime No.0093/2024, dated 09.04.2024, registered with Dondaicha Police Station, District Dhule, for the offences punishable under Sections 409, 420, 465, 467, 468, 471, 120[B] of the IPC.

3. This court by orders dated 02.08.2024 granted interim protection to the applicants. The same has been continued till date.

4. The case of the prosecution is that land out of gut no.210, which was later on numbered as 210 part 1 and 210 part 2, situated at Taukheda village was purchased for the Shindkheda Taluka Kukutpalan Co-operative Society [*for brevity "society"*] from the funds of the society in the year 1988. At the relevant time, the Applicant - Accused No.1 - Mr. Hemant Bhaskar Deshmukh in ABA/1322/2024 was the Chairman of the Co-operative Society and had purchased the land in the name of the society from the funds of the society. However, the Chairman of the society by making fake resolution and fabricated documents with the aid of the government official i.e. Accused No.3 - The then Assistant Registrar, changed the mutation entry of the society in his name and, thereafter, transferred the land of the society to his family members, thereby, cheated the society and has committed offence under the aforesaid sections and, accordingly, the FIR is registered against the applicants. Thus,

the applicants had applied for anticipatory bail before the sessions court, which was rejected. The applicants have now applied for anticipatory bail before this court.

SUBMISSIONS ON BEHALF OF THE APPLICANTS:

5. Mr. Shirish Gupte, learned Senior Advocate submits that the Applicant / Accused No.1 - Mr. Hemant Bhaskar Deshmukh in ABA/1322/2024 was the then Chairman of the society. He submits that the land is not purchased by the society from the funds of the society. He submits that the applicant has purchased the same from his own funds and there is no absolutely evidence that the land was purchased from the funds of the society.

It is further submitted that the applicant has purchased the land from his own funds but there is a overwriting in the Sale Deed indicating that the applicant / vendee as the Chairman of the society. He submits that this is a subsequent insertion without the initials of the applicant. Notwithstanding the same, he submits that, it is a mere designation of the applicant. The land was never purchased from the funds of the society nor the payment is made by

cheque. The funds for purchase are provided by the applicant, who was the Chairman of the society and all outstanding dues of the society are also paid by the applicant; as is reflected from the resolution passed by the society dated 10.08.1997 and, accordingly, he had applied to the Assistant Registrar to grant 'No Objection' for recording the mutation entry in favour of himself. The same was granted by the Assistant Registrar, on 22.06.2015.

He submits that, at best, it could be a civil dispute between members of the society and the applicant Chairman. The complainant, is the vendor of the land, who had filed the complaint to the police and, thereafter, inquiry is conducted and a formal complaint is filed by the Registrar of the cooperative societies.

He submits that the crime has been registered after 37 years from the registration of the Sale Deed and in any event after 12 years from the date of the change of the mutation entry. It is further submitted that the applicant is a politician, who had held high elected positions and is now targeted by his opponents, who are in power for political reasons.

He further submits that the applicant is 83 years old and suffering from various ailments and, as such, this court may also consider anticipatory bail on the ground of his medical condition. He submits that various orders are passed by this court, wherein the applicant has been granted bail on the ground of his medical conditions.

SUBMISSIONS ON BEHALF OF THE STATE:

6. Per contra, Mr. A. B. Girase, learned Public Prosecutor submits that the property is purchased by the society from the funds of the society. The applicant at the relevant time was the Chairman of the society and, as such, has purchased the property for the society. It is stated that administrator is appointed on 04.03.2003 for the society; as the society was not functioning. It is also stated that mutation entries are made with respect to the property in the name of the society. The learned P.P. also submits that the Talathi / Chief Circle Officer had earlier refused to alter the mutation entry in the name of the applicant. Thereafter, the applicant had applied to the Assistant Registrar, Co-operative Societies, Dhule, on the basis of a resolution passed by the society to

grant 'No Objection' for change of the mutation entry, wherein the order is passed dated 22.06.2015 for deletion of the name of the society. In the said order it is reflected that the applicant has paid all the dues of the society as the society has stopped functioning and all the dues of the society are paid and that the name of the society should be deleted from the mutation entry. The learned P.P. further submits that the document dated 22.06.2015 of the Assistant Registrar, Co-operative Societies, Dhule, there is no inward for the application or outward number for the order passed. It is on the basis of the directions / order issued by the Assistant Registrar mutation entry has been deleted of the society and the applicants name is inserted qua the said land. Subsequently, lands are sold to the family members by the applicant. The learned P.P. submits that there is clear evidence on record to indicate that the applicant has committed fraud thereby transferring the land of the society in his own name and has benefitted from the same. He has further transferred the property in the name of the family members.

The learned P.P. further submits that as regards the health conditions of the applicant; this court may consider the

serious nature of the complaint. However, he has left it to the discretion of the court to pass appropriate orders as the court considers it appropriate to grant anticipatory bail on medical conditions. He submits that, prima facie, since, this is a serious matter, where the applicant has fraudulently transferred the land of the society into his name and, thereafter, in the name of his family members and has thus committed fraud. The involvement of the applicant is visible, as such, on merits he submits that there is no case made out by the applicant for grant of anticipatory bail.

The learned P.P. further submits that the Resolution dated 10.08.1997, on the basis of which the mutation entry is changed is a fabricated document and that there is no such Resolution on record.

7. Mr. Rajendrraa Deshmukkh, learned Senior Advocate on behalf of the complainant submits that he has brought the fraud to the notice of the police and has acted as a whistleblower.

ANALYSIS

8. Having considered the rival submissions at the outset it is necessary to note basic facts that the applicant was a politically elected leader of Dhule and was holding elected positions. Criminal case initiated is on the basis of complaint given by the original vendor of the property, who has received valuable consideration for the sale of the property in the year 1988. Prima facie, he has no locus to raise any grievance. However, the grievance is raised just before the elections to the police by letter dated 05.02.2024. The said letter is sent for verification by the police immediately by letter dated 07.02.2024 to the Assistant Registrar, Co-operative Societies, Dhule and the Assistant Registrar on verification of the record has registered the FIR on 09.04.2024.

None of the members of the society has objected to the transfer of land from the year 2015. However, the vendor of the property, who has received valuable consideration for sale of the property and who has no concern whatsoever with the property; writes a letter to the police that there is some irregularity committed by the applicants and on that basis the proceedings are initiated in expeditious manner. The

proceedings initiated is in the nature of fishing and roving inquiry.

Prima faice, the setting of criminal law in motion is tainted with oblique political motive. The allegations against the applicant that this is done to inflict political consequences and to keep the applicant out of the political arena, prima facie, is probable and acceptable. Considering the same, the allegations of the prosecution that the Resolution dated 10.08.1997 and the order passed by the Assistant Registrar dated 22.06.2015 granting directions to delete the name of the society are fabricated documents is prima facie not acceptable.

On merits of the case, the State has all opportunity to establish the case, however, the State has made the Assistant Registrar, Co-operative Societies, Dhule, who has passed the order dated 22.06.2015, as the accused in the case thereby indicating that such an order is prima faice passed by the Assistant Registrar and the document / order is not a fabricated one though it could be possibly done for extraneous consideration. The mutation entry carried out deleting the name of the society has not been challenged either by the members of the society or anybody connected with the society

including the administrator for more than 9 years. However, the person who is not connected with the matter has filed a complaint and the police immediately has referred the matter to the Assistant Registrar, who in turn has registered an FIR.

9. The manner in which the criminal proceedings are initiated the bonafides of the prosecution are not above doubts. Considering, more particularly, the fact that the applicant was a political opponent at the relevant time of the government in power. However, this order would not mean that the crime unearthed by the investigation (if any) is to be rejected outright. The prosecution will have to establish their case before the trial court. As of today, the case is based on documentary evidence, which are in possession of the State. The case rest on the order dated 22.06.2015 and on the Resolution of 10.08.1997 and these documents are in possession of the State.

10. The Hon'ble Supreme Court in the case of **Babubhai Vs. State of Gujarat and Ors., 2010 AIR SCW 5126**, has held that the prosecution has to be fair and should not be carried

out with ulterior motive. The Hon'ble Apex Court in the case of **Babubhai** (*supra*), while holding that the prosecution has to be fair has discussed various Judgment and observed as under:

"25. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur Vs. State of Punjab AIR 1960 SC 866; Jamuna Chaudhary & Ors. Vs. State of Bihar AIR 1974 SC 1822; and Mahmood Vs. State of U.P. AIR 1976 SC 69).

26. In State of Bihar Vs. P.P. Sharma AIR 1991 SC 1260, this Court has held as under:

"Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism.Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the Investigating Officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court.Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power....The word 'personal liberty'

(under Article 21 of the Constitution) is of the widest amplitude covering variety of rights which goes to constitute personal liberty of a citizen. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme Law, the Constitution. The investigator must be alive to the mandate of Article 21 and is not empowered to trample upon the personal liberty arbitrarily..... An Investigating Officer who is not sensitive to the constitutional mandates may be prone to trample upon the personal liberty of a person when he is actuated by mala fides."

27. *In Navinchandra N. Majithia Vs. State of Meghalaya & Ors. AIR 2000 SC 3275, this Court considered a large number of its earlier judgments to the effect that investigating agencies are guardians of the liberty of innocent citizens. Therefore, a heavy responsibility devolves on them of seeing that innocent persons are not charged on an irresponsible and false implication. There cannot be any kind of interference or influence on the investigating agency and no one should be put through the harassment of a criminal trial unless there are good and substantial reasons for holding it. Cr.P.C. does not recognize private investigating agency, though there is no bar for any person to hire a private agency and get the matter investigated at his own risk and cost. But such an investigation cannot be treated as investigation made under law, nor can the evidence collected in such private investigation be presented by Public Prosecutor in any criminal trial. Therefore, the court emphasised on independence of the investigating agency and deprecated any kind of interference observing as under:*

"The above discussion was made for emphasising the need for official investigation to be totally extricated from any extraneous influence..... All complaints shall be investigated with equal alacrity and with equal fairness irrespective of the financial capacity of the person lodging the

complaint.A vitiated investigation is the precursor for miscarriage of criminal justice."

(Emphasis added)

28. *In Nirmal Singh Kahlon (supra), this Court held that a concept of fair investigation and fair trial are concomitant to preservation of the fundamental right of the accused under Article 21 of the Constitution of India.*

29. *In Manu Sharma Vs. State (NCT of Delhi) (2010) 6 SCC 1, one of us (Hon'ble P. Sathasivam, J.) has elaborately dealt with the requirement of fair investigation observing as under:-*

"..... The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India....

It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to

law as nobody stands above law de hors his position and influence in the society....

The Court is not to accept the report which is contra legem (sic) to conduct judicious and fair investigation....

The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of the police to make investigation.....".

11. In terms of the Resolution dated 10.08.1997 the applicant was given all the rights to dispose or transfer the property and to complete all the outstanding payments. It is stated that in pursuance of the Resolution dated 10.08.1997, the applicant had made all the outstanding payments. It is stated in the Resolution that some amounts are contributed by the members of the society. Since, this society did not become operational the amounts were to be returned to the members. The Chairman was given the right to either dispose the land or to return the amount and transfer the land. The right of the society had come to an end in pursuance of the Resolution dated 10.08.1997.

12. The plea made by the complainant, the vendor of the property in his complaint dated 05.02.2024, that he has

sold the property on certain conditions that the property would be utilized for benefit of the society and that it was promised that the vendee would give employment to the complainant is not reflected in the sale deed made on 01.09.1988. The invocation of criminal process by the complaint is for political purposes. Thus, the interim protection granted to the applicant deserves to be confirmed.

13. The applicant is also granted medical benefit. He is of 83 years old, suffering from medical ailment and this court has granted bail to the applicant in various matters on medical grounds earlier. Considering the same, this would be a case for grant of anticipatory bail on merits as well as on the grounds of health conditions.

CONSIDERATION

14. Considering the order in ABA/1322/2024, the interim relief in ABA/1319/2024 is also confirmed.

ORDER

15. In view of the above, the interim protection granted by orders dated 02.08.2024 in respective applications stands confirmed, on the following terms:

i] The applicants shall attend the police station as and when required by the Investigating Officer.

ii] The applicants shall not tamper with the evidence of the prosecution in any manner. They shall not influence the informant, witnesses and other persons concerned with the case.

iii] The applicants shall co-operate with the investigation and also in the proceedings before the trial Court.

16. In the event, the applicants violate any of the conditions specified in this order, it shall be liable to be cancelled.

17. It is also clarified that the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

18. The applications stand disposed of.

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[ARUN R. PEDNEKER, J.]