



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1676 OF 2023

Siddeshwar s/o Bhivraj Khatke .. Applicant

versus

The State of Maharashtra .. Respondent

Mr. M. U. Shelke, Advocate for the applicant.
Mrs. M. N. Ghanekar, APP for the State.
Mr. P. K. Deshmukh, Advocate for informant.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1763 OF 2023

Kashinath s/o Hanumant Bhojane .. Applicant

versus

The State of Maharashtra .. Respondent

Mr. M. U. Shelke, Advocate for the applicant.
Mrs. M.N. Ghanekar, APP for the State.
Mr. Pramod Gaikwad, Advocate holding for Mr. A. G. Talhar, Advocate
for informant.

CORAM : R. M. JOSHI, J.
RESERVED ON : 24th JANUARY, 2025.
PRONOUNCED ON : 28th JANUARY, 2025.

PER COURT :

1. Question arises in these applications as to whether the applicants shall be entitled for pre-arrest bail if prima facie their

involvement is seen in the offence of fabrication of record of quasi judicial authority.

2. Applicants apprehend arrest in connection with Crime No. 335/2023 registered with Anand Nagar Police Station, District Osmanabad, for the offences punishable under Sections 420, 465, 466, 468, 471 of the Indian Penal Code.

3. The gist of the First Information Report lodged by Naib Tahsildar, Osmanabad indicates that several complaints were received by the District Collector, Osmanabad regarding forged documents i.e. certified copies which are issued from the record of the office regarding proceedings of inam/tenancy and ceiling. The District Collector, therefore, formed a committee to hold the enquiry and directed the committee to submit its report. In due course of time one more committee was appointed. Both committees have visited the record room, perused relevant records and submitted report indicating that the certified copies are issued in respect of the proceedings which either do not exist or are found forged. The committee suggested registration of crime and accordingly, offence came to be registered vide Crime No. 325/2023.

4. As far as applicant Siddheshwar in Anticipatory Bail Application No. 1676/2023 is concerned, there is allegation against him that he has obtained certified copy of the proceeding bearing No. 198/1/TNC/1972. This certified copy includes affidavit of tenant allegedly surrendering his tenancy in respect of Survey No. 47.

5. As far as applicant Kashinath in Anticipatory Bail Application No. 1763/2023 is concerned, there is allegation against him that he forged certified copy of record in File No. 1365/1951.

6. In both the applications there is allegation against applicants that they are direct beneficiaries of fabrication of record and that in order to ascertain their involvement as well as involvement of others in the crime, investigation is necessary.

7. Learned counsel for applicants submits that merely on the basis of enquiry committee's report, no offence could have been registered against applicant Siddheshwar as the said committee has not conclusively held that it is a case of fabrication of documents. It is his further submission that no opportunity was given to the applicant of hearing in that regard. It is also contended that the

subsequent proceeding indicates existence of the documents in question in the proceeding i.e. File No. 198/1/TNC/72. It is his contention that there is a statement made by the successors of original tenant about settlement between the parties and suit being decreed on such settlement. Learned counsel for the applicants has also drawn attention of the Court to the relevant documents. In response to the submissions about there being no post of Additional Collector during the relevant period i.e. in the year 1972, he has placed on record certified copies of other proceedings indicating existence of such post at the relevant time.

8. As far as applicant Kashinath is concerned, apart from the aforestated submissions, it is sought to be argued that merely because now the document is not found in the record of the office, it cannot be claimed that the said document/file is fabricated. It is also his contention that there is a statement of the translator who has translated the document from *Modi* script to *Devnagari*. It is his submission that in any case there cannot be attribution of any forgery of documents by the present applicant. He, therefore, seeks confirmation of interim relief granted in favour of applicants.

9. Learned APP and learned counsel for the victims vehemently opposed the applications. Though it was argued on behalf of learned APP that the post of Additional Collector was not available at the relevant time, however, there is evidence on record in order to indicate that such post was very well available and the orders sought to be placed on record in respect of the proceedings are genuine one.

10. It is further contention of learned APP that the documents which are on record are apparently fabricated. She has drawn attention of the Court to the documents in question to show that the handwriting of the said document is altogether different than any other document. It is her submission that even otherwise, the document in question i.e. affidavit of Shripati/protected tenant is contrary to the submissions of the landlord in the earlier proceeding i.e. File No. 1966/OP/38G/43. It is her submission that the present applicants are the beneficiaries of the crime and unless custodial interrogation is conducted, the investigating agency will not be in a position to unearth the scam as well as find out the other culprits in the crime.

11. Learned counsel for victims have drawn attention of the Court to the proceeding which, according to them, indicates that the documents in question are fabricated and the same are created to suit the interest of applicants.

12. At this stage, it would be relevant to take into consideration the judgment of the Hon'ble Apex Court in case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and others, **AIR 2011 Supreme Court 312**. In Paragraph No. 122 of the judgment, guidelines which are required to be considered for the purpose of grant of pre-arrest bail are laid down which are reproduced as under :-

122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of [sections 34](#) and [149](#) of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

The aforestated guidelines clearly indicate that where it is found that arrest of any person is sought to be made in order to cause humiliation to him or where such arrest is not essential for the

purpose of investigation, it should be avoided. So also that by imposing appropriate adequate conditions, liberty can be protected. Needless to mention that a balance is required to be struck between the personal liberty as well as right of the investigating agency to carry out effective investigation, of course depending upon the nature of crime and requirement of custodial interrogation.

13. Here in this case, first informant is the Naib Tahsildar and obviously he is not one having any personal interest in the matter. This is not a case wherein one party being in inimical terms with other has sought to file any report in order to consider the same in appropriate case as false/over implication. Consequently, it can be said that the accusations are made only with object of injuring or humiliating the applicants by arresting them.

14. Apart from this, it is material to note that what is alleged here is creation/fabrication of record of the proceedings under Tenancy Act. These proceedings are quasi judicial in nature and it determines the substantive rights of the parties in respect of tenancy. If it is permitted for the unscrupulous persons to fabricate the file itself or to fabricate any part of such document, it will lead to serious

consequence affecting rights of genuine persons in the properties adversely.

15. We come across more often than seldom with the situation that even the orders of the Courts are forged and sought to be acted upon by dishonest persons. Needless to say that such activities are required to be dealt with iron hands. Having regard to the nature of crime and possible involvement of persons at different levels, thorough investigation is must therein to get to the root of the crime.

16. Though this Court is of the view that at the relevant time post of Additional Collector was very well in existence, however, on the face of it, the documents in question are dubious. It is pertinent to note that the other contemporary documents are not recorded/maintained in the manner in which the disputed document is done. Apart from this, perusal of undisputed document i.e. order in File No. 1986/OP/38-G/43 clearly indicates that the landlord has requested that Respondent No. 1 i.e Shripati may be given this area from Survey No. 47 and from Survey No. 135 (to the extent of 5 acres 28 gunthas) of which also he is protected tenant instead of Survey

No. 57 above. Respondent No. 1's no objection is also recorded in the said order. If such is the situation, question of Shripati i.e. protected tenant filing affidavit that he was never tenant of Survey No. 47 does not arise. This is more than sufficient to say prima facie that it is a fabricated document. Undisputedly, applicant Siddeshwar is one of the beneficiaries of the said document. There is report of the enquiry committee to indicate that no such document is found in the record. No doubt, certified copy must have been issued by the employee of the concerned office however, custodial interrogation of the applicant is also necessary. Similar is the case with another applicant. The committee's report as well as prima facie perusal of the record sufficiently demonstrate that this is apparent case of bogus documents being prepared to suit the interest/convenience of concerned parties.

17. Learned counsel for the applicants had submitted that the liberty of the applicants was protected by interim relief and same may be confirmed. In this regard, it is pertinent to note that interim relief is granted on prima facie consideration of the applications and submissions made. At that time, investigation papers were not placed before this Court to consider merit of case in detail. As such,

interim relief granted to the applicants does not have bearing on the outcome of these applications.

18. Having regard to the nature of offence and seriousness thereof, so also in view of need of further effective investigation, this is not a case wherein applicants can be directed to be interrogated under the protective umbrella of pre-arrest bail. This will not allow the investigating agency to effectively carry out investigation. In such circumstances, this is not a fit case for grant of anticipatory bail. Hence, both the applications are rejected.

(R. M. JOSHI)
Judge

dyb

LATER ON :

1. After pronouncement of this order, learned counsel for applicants seeks continuation of interim relief for a period of eight weeks for challenging this order before Hon'ble Supreme Court.

2. Learned APP opposed the said request on the ground that the custody of the applicants is necessary at the earliest.

3. Since the liberty of the applicants was protected by orders dated 12.10.2023 and 20.10.2023 respectively, the said orders be extended for a period of four weeks from today in order enable applicants to test the said order before the Hon'ble Supreme Court.

(R. M. JOSHI)
Judge

dyb