



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Appeal No. 259 Of 2025

Sayrabano Innus Deshmukh,

Age : 47 years, Occupation - Household,

R/o : Khadka, Tq. Newasa,

Dist. Ahmednagar.

.. Appellant

Versus

1. The State of Maharashtra,
Through Police Inspector,
Newasa Police Station,
Dist. Ahmednagar.

2. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.

3. Kishor Trimbak Waghmare,
Age : 60 years, Occupation - Agri,
R/o : Jeur Baijabai, Tq. Nagar,
Dist. Ahmednagar.

.. Respondents

WITH

Criminal Appeal No. 281 Of 2025

Arbaz s/o Yunus Deshmukh,

Age : 21 years, Occupation - Education,

R/o : Khadka, Tq. Newasa,

Dist. Ahmednagar.

.. Appellant

Versus

The State of Maharashtra,
Through Police Station Officer,
Newasa Police Station,
Dist. Ahmednagar.

.. Respondents

* **Mr. Tushar C. Shinde and Mr. Akash U. Peche,**
Advocate for the Appellant in Cri. Appeal No.259/2025.

- * **Mr. Sk. Majhar Jahagirdar**
Advocate for the Appellant in Cri. Appeal No.281/2025.
- * **Mrs. Chaitali Chaudhari Kutti**
APP for Respondent No.1 and 2/State in both matters.
- * **Mrs. Usha N. Jadhav**
Advocate for Complainant in both matters

CORAM : SHAILESH P. BRAHME, J.

DATE OF RESERVING THE ORDER : 29th APRIL 2025

DATE OF PRONOUNCING THE ORDER : 6th MAY 2025

FINAL ORDER :

. Appellant - Sayra Bano in Criminal Appeal No.259/2025 and Appellant - Arbaz in Criminal Appeal No.281/2025 are Mother and Son. They are assailing distinct judgment and order passed by the learned Additional Sessions Judge, rejecting their applications for pre-arrest bail. They are apprehending arrest in furtherance of offence bearing C.R. No. 0555/2024 registered with Newasa Police Station, District Ahmednagar for offences punishable under Sections 420, 506, 468, 471 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va), 3(1)(f) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. It is the case of the Informant - Kishor Waghmare that land Gut No.45/2 measuring 2H and 49R situated at Khadka Tq. Newasa, Dist. Ahilya Nagar was jointly owned by himself and his sister -

Sarita. It is alleged that Appellants in collusion with other co-accused prepared forged death certificates of the Informant and his sister got deleted their names from revenue record. They further alleged to have created false record for entering name of Appellant - Sayra Bano.

3. Mr. Tushar Shinde learned Counsel for the Appellant - Sayra Bano, submits that Appellant relied on death certificate produced by Vicky Kishor Waghmare and Pradip Vilas Kalokhe. By following due procedure of law, mutation entry no.16677 was effected relying on the death certificate made available by those persons. It is submitted that land in question was Class-II Inam land. It was proposed to be sold by Informant and his sister to Appellant – Sayra Bano but it was inalienable. Agreement was executed on 05.02.2013 and 07.02.2014 by original owner. Appellants paid Rs.81,00,000/- and they were put in possession before 10 years. It is contended that even Will was executed by Informant – Kishor on 07.02.2014 in favour of Appellant – Sayra Bano which was registered. Sarita executed Will on 02.02.2013.

4. Learned Counsel further submits that both Appellants did not verify the death of Informant and his sister. Under Right to Information Act, they solicited information which disclosed that death was reported by Vicky Kishor Waghmare, son of Informant and Pradip Vilas Kalokhe, son of Informant's sister – Sarita. The death was ascertained from the certificate on Dr. G.R. Kulkarni. No forgery or any incriminating role of the Appellants can be made out. Few

documents are tendered across the bar by the Appellant. It is submitted that relevant papers are already recovered during the investigation. The co-accused – Yunus has already been released on bail. On these submissions, Appellant seeks pre-arrest protection.

5. Learned Counsel Mr. Majhar Jahagirdar appearing for Appellant – Arbaz adopts the submissions. He would submit that no specific role has been attributed to his client. Appellant's name was not entered in the revenue record and he is of the tender years of age. It is submitted that Informant has suppressed material facts in the First Information Report and his sister has filed R.C.S. No.1086/2023 for perpetual injunction. They were not granted any relief. Hence Appellants are implicated falsely in the present offence.

6. Both the Appellants have submitted that their previous attempt to secure bail failed. After receiving information under Right to Information Act, they preferred bail applications before the Sessions Judge, which are rejected by the impugned judgment and order. Due to change in circumstance, they are entitled to have pre-arrest protection.

7. Learned APP tenders on record original papers and also she refers to affidavit-in-reply. It is vehemently contended that custodial interrogation of the Appellants is required to recover original documents, to secure specimen signatures and to trace out other perpetrators. It is submitted that both the Appellants have played

incriminating role and there is cogent material against them. It is contended that it was transpired that Appellants perviously also cheated one Bhausahab Dadarao Bhange by similar modus operandi. Bhausahab has filed R.C.C. No.317/2021. My attention is adverted to antecedents of the Appellants, supplementary statements of the Informant, statement of Bhausahab Bhange, revenue record and death certificates in question.

8. Learned Counsel Mrs. Usha Jadhav appearing for the Informant adopts the submissions of learned APP. She would submit that Informant was in need of money and received amount from the Appellants in 2013 and 2014. On or above 13.10.2013, parties have agreed to cancel the agreements. It is submitted that Appellants have indulged in serious crime.

9. I have considered rival submissions of the parties. I have gone through relevant papers of the investigation as well as affidavit-in-reply opposing both the appeals.

10. Co-accused – Yunus has been released on bail vide order dated 15.10.2024 by the learned Special Judge in Criminal Bail Application No.307/2024. Appellants' pre-arrest bail applications were rejected by the learned Special Judge vide order dated 25.06.2024. Their earlier attempts failed in securing pre-arrest protection. After receiving the information under Right to Information Act, fresh bail applications were submitted. It cannot be said that Appellants are filing successive

bail applications. Due to subsequent events and change of circumstances, last bail applications were filed. Releasing of co-accused is one of the circumstances to apply afresh. The objection of the Respondents in this regard stands overruled.

11. First Information Report lodged by the Respondent No.2 – Kishor Waghmare, does not disclose that R.C.S. No.1086/2023 was filed or there was agreement executed between the parties on 05.02.2013 as well as 07.02.2014 which were registered. F.I.R. is silent for the registered Will executed on 02.02.2013 and 07.02.2014. Informant should have disclosed all the transactions between the parties so as to how transparent investigation. Informant and his sister appeared to be holder of land Gut No.45/2 situated at Khadka Tq. Newasa, Dist. Ahilya Nagar, which was Class-II Inam land. Registered agreements executed by them in favour of Appellants show that total amount of Rs.81,00,000/- was parted by the Appellants and they were inducted in possession of the land.

12. On the basis of agreements, R.C.S. No.1086/2023 was filed for perpetual injunction by the Informant and his sister against the Appellant – Sayra Bano and others. They were unable to secure temporary injunction. Conspicuously Informant and his sister had executed Will on 02.02.2013 and 07.02.2014 respectively which were registered. If the land was Class-II Inam land and it was inalienable, indulgence in execution of agreements and Will creates doubts on genuineness of the Informant and his sister.

13. Informant and his sister are suppressing material facts. They have simultaneously executed agreements as well as Will. Appellant-Sayra Bano has been put into possession long back. The conduct of the Informant and his sister is extremely doubtful. In all probabilities, unless substantial amount is received, it is not possible to induct Sayra Bano in possession of the land.

14. Another factum to doubt the bonafides is that the documents placed on record which are secured under Right to Information Act, show that death of Informant and his sister were reported by their own children. Dr. G.R. Kulkarni appears to have issued certificates disclosing death. On the basis of information supplied to the Municipal Council, death certificates which are alleged to be forged have been issued and those were presented to the Appellants. Prima facie no role can be attributed to Appellants in securing death certificates. Therefore Appellant – Sayra Bano proceeded to record her name by deleting names of original owners.

15. If above sequence of events are perused, then learned APP is unable to point out the investigation conducted in respect of record of Municipal Council. Nothing is pointed to show that any record by Municipal Council in this regard, was verified or seized. Surprisingly no steps have been taken against Vicky Kishor Waghmare and Pradip Vilas Kalokhe who reported death. Their role appears to be incriminating but investigation is silent in that regard. Entire prosecution theory is suspicious and role of the Informant and his sister appears to be misleading.

16. Just on the basis of statement of Bhausahab or N.C.R. registered on 10.11.2024, I am not being persuaded to deny pre-arrest protection to the Appellants. Learned Counsel Mr. Tushar Shinde is right in contending that while recording mutation entry no.16677, procedure was followed and the hearing was conducted. Informant or his sister could have raised objection, but no steps were taken. They are making hue and cry against the mutation entry, but their own conduct is suspicious. Additionally their children Vicky and Pradip appear to have been involved in the foul play. I am of the considered view that Appellants have made out a case to grant them pre-arrest protection.

17. Both impugned judgment and order do not consider above aspect of the matter. Those are liable to be quashed and set aside. I, therefore, pass following order :

ORDER

(a) Criminal Appeals are allowed by quashing and setting aside the impugned judgment and order.

(b) Appellant - Sayrao Bano in Criminal Appeal No.259/2025 and Appellant - Arbaz in Criminal Appeal No.281/2025 in the event of their arrest in furtherance of C.R. No. 0555/2024 registered with Newasa Police Station, District Ahmednagar, shall be released on bail on furnishing bond of Rs.30,000/- with one solvent surety each, on following conditions :

(i) Appellants shall cooperate the Investigating Officer and shall make themselves available on every Saturday between 10:00 am. to 04:00 pm. till filing of the charge-sheet.

(ii) Appellants shall make themselves available for giving specimen signatures or furnishing documents as demanded by the Investigating Officer, provided those are in their custody.

(iii) Appellants shall not tamper the prosecution witnesses.

SHAILESH P. BRAHME
JUDGE

Najeek.