

**CNR No. MHNS010001472022**

**Order below Exh.1 in Cri. Bail Application No.52/2022.**  
( Manoj Kundan Nankani Vs. State )

The present application is moved by the applicant-accused Manoj Kundan Nankani under section 438 of Cr.P.C. in connection with CR No.700/2021 registered with Igatpuri Police Station for the offence U/s. 465,467,468,471,420 of the Indian Penal Code and under section 81 of the Registration Act, 1908.

2. It is stated in the application that Igatpuri police station has registered the offence on the basis of the order passed U/s. 156(3) of Cr.P.C. by the learned JMFC, Igatpuri in Cri. M.A. No.449/2021 dated 18.12.2021. The allegation are that the applicant-accused has executed false sale-deed bearing its registration Sr. No.1233/2020 dated 16.7.2020 in respect 500 sq.meters in plot No.224/1/224/2/plot No.1/Hissa No.3 (hereinafter referred to as “impugned sale-deed” for short) , in favour of one Firoj Pathan. The applicant-accused apprehend arrest in connection with the said crime registered with Igatpuri Police Station.

3. It is stated in the application that, applicant-accused having the undivided share in the property and therefore, he executed the impugned sale-deed in favour of Firoj Pathan. It is also stated that the civil litigation is pending between the parties. It is also stated that the custodial interrogation of the applicant-accused is not at all necessary as offence is relating to documents, these and other grounds set out in the application, has prayed to allow anticipatory bail application.

4. The application is strongly opposed by State. I.O. is

present and submitted his report on record.

5. Heard, both the parties including the original complainant, who has filed the criminal proceeding before the learned Magistrate, Igatpuri as stated above.

6. On perusal of the documents, it appears that, initially two sale-deeds were executed first sale-deed is bearing No.2974/2010 registered on 14.12.2010 in respect of the property bearing Gat No.224, Hissa No.2 admeasuring 1.16.3 R situated at Igatpuri, Dist. Nashik in between Kundan Dakhanmal Nankani, Rajkumar Mangaldas Valecha, Amar Rajkumar Valecha and previous owners of the said property. The purchaser No.1 Kundan Nankani is the father of the present applicant-accused. The present applicant-accused is signatory as witness to the said document. Subsequently, in the year 2015 another sale-deed took place particularly on 6.4.2015 in between Kundan Nankani, Manoj Nankani, Amar Valecha, Rajkumar Valecha with the earlier owners land situated in Taluka Igatpuri, Dist. Nashik bearing S. No.224/1 admeasuring 58.2 R.

7. Thereafter, one sale-deed bearing No.1736/2017 took place in between Kundan Nankani, Manoj Nankani, Rajkumar Valecha, Rajkumar Valecha, Amar Valecha and others with Sai Developers through its partner Mukesh Annaji Jain. One correction deed also executed dated 30.1.2018, which is references as earlier sale-deed dated 25.7.2017 due to the area of the property which was sold in the year 2017 and was reduced to some extent by (कमीजास्त पत्रक) "*Kami-jast patrak*" by revenue and therefore, said correction deed was executed. It is stated at bar by learned counsel

Shri. Shetty that in this sale-deed both the property mentioned in the earlier sale-deed above, included and amalgamated and sold out to Sai Developers. He further pointed out that subsequently Manoj Nankani executed the disputed sale-deed in the year 2020 in favour of Firoj Pathan bearing No.1233/2020 and the sold out his alleged undivided share in the said disputed property particularly 500 sq.meters area to defendant and this sale-deed is bone of the dispute.

8. The parties have filed civil suits bearing Special Civil Suit No.487/2018, 293/2020, 352/2020 in the Court of CJSD at Nashik. So far as the Special Civil Suit No.293/2020 is in respect of the present dispute, which appears to be filed by Rajkumar Valecha against the present applicant-accused and his father and against the purchaser of the property i.e. Firoj Pathan for cancellation of sale-deed and consequential relief in terms of declaration and injunction. It is told by both the parties at bar that said suit is pending at its initial stage.

9. The learned APP Shri. Suryvanshi submitted that, custodial interrogation of the applicant-accused is necessary as the applicant-accused has executed the sale-deed in respect of the portion of the land which is already sold out to Sai Developers and therefore, when he was not holding any right, title and interest in respect of the said property, he has executed the sham document. The learned counsel Shri. Shetty supported the version of learned APP on material aspect and submitted that it is an economical offence. The act on the part of the applicant-accused has severely affected the development of the project which is initiated by Sai

Developers and it has given set back to the business of said Sai Developers and consequently the message has gone in the society that said property is disputed one. Therefore, he submitted that application moved by the applicant-accused may be rejected. During the course of argument, he relied on the documents discussed above and the reported case-laws.

10. On the other hand, learned counsel Shri. V.R. Deshpande for applicant-accused has submitted that the present dispute is of civil nature, though the learned Magistrate has passed order of investigation under section 156(3) of Cr.P.C., same was challenged by his client before the District and Sessions Court, Nashik by filing a Criminal Revision application, however, subsequently, same was withdrawn when came to know that it is not only the order under section 156(3) of Cr.P.C. is passed, but it has been effected by registering the crime and therefore, as efficacious remedy is not available in criminal revision application as District and Sessions Court cannot quash the FIR and therefore, on technical ground said criminal revision application was withdrawn. Therefore, he submitted that being the nature of the civil dispute, there is no need for custodial interrogation of the applicant-accused and hence, prayed to allow the application.

11. So far as law relating to the Anticipatory Bail is concerned, the Hon'ble Supreme Court in **Gurbaksh Singh Sibbia etc. Vs The State of Punjab and Sarbajit Singh and another Vs The State of Panjab, 1980(2) SCC 565**, wherein Hon'ble Supreme Court given various parameters and guidelines for considering the anticipatory bail, those guidelines are reproduced as under,

“In regard to anticipatory bail, if the proposed accusation

appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by *mala fides*; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail".

12. Subsequently, the Hon'ble Supreme Court after referring Gurbaksh Sibbia judgment in **Siddharam Satlingappa Mhetre Vs State of Maharashtra and others, 2010 (4) Mah.L.R... Maharashtra Law Reporter 610**, has laid down various guidelines in this land mark Judgment that,

***“Relevant consideration for exercise of the power***

*121. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under section 438 Cr.P.C. by a wise and careful*

*use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.*

*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”.*

13. Thus, considering the guidelines laid down by the Hon'ble Supreme Court in the case-laws referred above, this anticipatory bail application is to be considered on the touch stone of the parameters laid

down in the above two cited Judgment. As stated above the present case is based upon documentary evidence. Execution of the impugned sale-deed by the applicant-accused is not disputed. Said sale-deed is registered one earlier sale-deeds by which the applicant-accused and complainant came to the ownership are also placed on record. Now it has to be seen as to whether the custodial interrogation of the applicant-accused is necessary for the progress of the investigation.

14. On perusal of the record, it appears that all the documents which are part and parcel of the present dispute by an large are public documents and registered documents. So far as the original documents are concerned they are in custody of the respective parties. I.O. has to investigate into the matter as to whether alleged offence took place as alleged in the complaint and FIR and has to come to the logical conclusion on the basis of the documentary evidence.

15. So far as case-laws relied upon by the learned counsel Shri. Shetty, they are relating to the high level economical offence and therefore, the Hon'ble Supreme Court has held that the power under section 438 of Cr.P.C. being an extraordinary remedy, has to be exercised sparingly, more so, in cases of economic offences. Economic offenses stand as a different class as they affect the economic fabric of the society and therefore, so far as economical offences are concerned anticipatory bail need not be granted. He also relied upon **Jitendra Singh Vs The State of Mahdya Pradesh and ors. in Special Leave Petition (C) No.13146/2021**, wherein it is held that, the revenue entries are only fiscal purpose, such entries are for collecting only land revenue.

16. However, facts of the present case are altogether different and therefore, they are not helpful to him in present case. It is single transaction executed between the applicant-accused and one Firoj

Pathan though it might have some economical repercussion upon the parties related with the transaction, however, the parties have already invoking the remedy of Civil Jurisdiction, and therefore, to my mind the present case is fit case in which the applicant-accused is entitled to grant anticipatory bail as his custodial interrogation is not required. Therefore, Hence, following order is passed.

**ORDER**

- 1) Anticipatory bail application No.52/2022 is hereby allowed.
- 2) Interim anticipatory bail granted by this court to applicant-accused Manoj Kundan Nankani by order dated 12.1.2022 is hereby made absolute on same terms and conditions.
- 3) Applicant-accused shall co-operate with the I.O. and produce the documents which are called by him.
- 4) Inform to concern police station accordingly.

Date- 04.02.2022

( M.A. Shinde )  
Additional Sessions Judge-8,  
Nashik.