

CNR No. MHNS010001642022
Order below Exh.1 in Cri. Bail Application No.54/2022.
(Baburao Walu Rikame and others Vs. State)
and

CNR No. MHNS010002912022
Order below Exh.1 in Cri. Bail Application No111/2022.
(Bajirao Ambu Gaikwad Vs. State)
and

CNR No. MHNS010002922022
Order below Exh.1 in Cri. Bail Application No.112/2022.
(Babasaheb Santosh Nagargoje Vs. State)
and

CNR No. MHNS010002932022
Order below Exh.1 in Cri. Bail Application No.113/2022.
(Baliram Murlidhar Pagar Vs. State)

Common Order below Exh.1.

The present anticipatory bail applications are moved by the applicants-accused, under section 438 of Cr.P.C. in connection with CR No.15/2022 registered with Taluka Police Station, Nashik for the offence U/s. 420,468,471,34 of the Indian Penal Code.

2. The present anticipatory bail applications have been filed in respect of the FIR lodged by Circle Officer Shashikant Pandurang Vidhate, Mahiravani, Tal. Dist. Nashik.

3. The brief facts of the case is as under;

The land Gat No.149/2, 150/2 and 150/3 situated at Vilholi, Tal. Dist. Nashik is the subject matter of the present dispute. The land owners are Bajirao Ambu Gaikwad and Babasaheb Santosh Nagargoje. They have purchased the said properties from earlier owners Jetho Gurumukhdas Tahilani,

Rachana Jetho Tahilani, Aparna Jagdish Badlani, Gopal Hariram Badlani through Power of Attorney Jagdish Hariram Badlani, Viraj Vilas shah, Karan Rajendra Shah and Agam Electricals Pvt. Ltd. through Asha Narendra Goliya.

3. Thereafter, they have sold the said properties to near about 38 purchasers by various sale-deeds registered with Sub-registrar and the necessary mutation entires were taken by the Revenue Authorities, prior the that Block Development Officer and Sarpanch of Grampanchayat, Vilholi have forwarded the map containing plots near about 55 in the said property with the prior resolution of the Grampanchayat Vilholi No.87/2018, dated 26.10.2018 to the Deputy Director, Town Planning for approval.

4. The record shows that the earlier owner of the said properties have moved the SDO, Nashik for N.A. proposal of the said property and same was approved by SDO, Nashik by his order dated 24.6.2020, 27.11.2020 and the said property is declared for use of Industrial purpose.

5. The record further shows that the NMRDA, Nashik has approved the Industrial layout of the said property on 18.5.2020 and 23.10.2020. The copies of those plans are placed on record. Sunil D. Bhor, Associates Architectural Engineering Consultant and Government Registered Valuer of the said layout, however, instead of using the said approved layout the applicant-accused Bajirao Ambu Gaikwad and Babasaheb Santosh Nagargoje have sold out various small plots to various purchasers as per the unauthorized, unapproved layout, which

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was allegedly proposed by the Grampanchayat, Vilholi to the NMRDA.

6. The report of Additional Chief Officer of NMRDA is placed on record, who has taken a serious objections to the said transaction. He specifically observed that, Talathi and Circle Officer, Mahiravani have not followed the proper procedure while taking the entries of those sale-deeds. Due to the said revenue entries said Industrial plots are illegally and without any authority are sub-divided and he has specifically observed that by virtue of those sale-deed illegal transfer of the said property has taken place and it will create legal complications in the matter and will cause loss to the State and due to the said sale-deeds, said plots are illegally sub-divided and had contravened the Section 44-A of the Maharashtra Registration Act, 1961.

7. The District Collector, Nashik has taken serious cognizance of the matter and made correspondence with Joint District Registrar, Nashik-1 by his letter dated 1.9.2021 and brought to the notice the illegality occurred while registering those sale-deeds in respect of the said property and proposed to take criminal action against the sub-registrar, Nashik. He also directed the District Re-development Officer and directed to initiate criminal proceeding against Bajirao Ambu Gaikwad the present Grampanchayat member, Babasaheb Santosh Nagargoje and Baliram Murlidhar Pagar, Village Development Officer. He also directed immediate action and proceeding to SDO, Nashik

dated 1.9.2021. He also directed to take necessary action by Departmental Enquiry against Talathi and Circle Officer.

8. The crux of the matter lies here as all the sale-deeds have been taken place by using the said unauthorized map by vendors. Surprisingly, the sub-registrar also did not object and went on registering those sale-deeds and the revenue authorities i.e. applicant-accused Baburao Rikame, Talathi and Jayant Lilke, Circle Officer of the said area are responsible for, have taken mutation entries in the revenue record and gave effect to those sale-deeds in the revenue record. When the said illegal activities were known to the higher authority of revenue, they took suo-moto cognizance of the matter and cancelled those revenue entries by RTS Revision No.97/2021 and RTS Revision No.172/2021 dated 12.11.2021.

9. Thus, high level enquiry was conducted and the District Collector, Nashik directed to the concern to lodged the FIR in the matter and accordingly, the FIR came to be registered at Taluka Police Station, Nashik.

10. The applicants-accused have been given sufficient opportunity being heard. The State also filed its representation/say and objected the bail applications.

11. The learned counsel Shri. S.V. Bhate for applicants-accused Bajirao Gaikwad, Babasaheb Nagargoje and Baliram Pagar submitted that the applicants-accused are local resident. They have not committed the offence as alleged by the prosecution. So far as the allegations against them are baseless

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and without any substance. They are ready to co-operate with the Investigating machinery. The case is based upon documentary evidence. At the most it can be termed as Civil dispute and no offence as alleged by the prosecution has taken place and therefore, prayed for anticipatory bail.

12. The learned counsel Shri. Atul Sanap for applicants-accused Baburao Rikame and Jayant Lilke has submitted that his clients are public servants. There is no chance that they will jump bail. They are ready to co-operate with the investigating machinery. They are also participating enquiry conducted by the revenue department and co-operated with the revenue department and therefore, prayed to allow anticipatory bail.

13. The I.O. is present. He has placed on record the various documents relating to the investigation carried out till this date.

14. The learned APP Shri. Suryavanshi also pointed out the role of each and every accused. He submitted that all the accused have intentionally sidelined the authorized lay-out issued by the NMRDA and used illegal and unauthorized lay-out at various stages of the transactions. The Government servants particularly used their office to facilitate the accused Bajirao Gaikwad and Babasaheb Nagargoje in the crime.

15. The Hon'ble Supreme court has laid down various parameters while considering the anticipatory bail in a leading case law 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 held that,

“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”.

In case of **Siddharam Satlingappa Mhetre Vs State of Maharashtra**

and others, 2011 (2) AIR Bom R 213, wherein Hon'ble Bombay

High Court held 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”.

Thus, in the above landmark decisions it is specifically emphasized that, a balance between individual liberty and loss or interest of public or the state in terms of free fair and full investigation is to be maintained while considering anticipatory bail application.

16. Now, let us consider the role of applicant-accused Bajirao Ambu Gaikwad. He was Sarpanch of village Vilholi. He is the land owner of the disputed plots before purchasing the said property, he himself was signatory as a Sarpanch to the disputed plan which shows to be a proposal given to Deputy Director, Town Planning, Nashik supported by resolution of the Grampanchayat Vilholi. Surprisingly, the same layout was used while executing the sale-deeds in the matter. The present applicant-accused subsequently became purchaser of the property and sold the said property to the various purchasers, when he was well aware that NMRDA has approved and sanctioned the plan dated 18.5.2020 and 23.10.2020 at the instance of earlier land owners. However, he deliberately kept in dark the proposed purchasers and sold out small plots to them illegally by executing the sale-deeds and got approved the revenue entries of those sale-deeds by using his influence of the office and was the main culprit in the present matter and Architect of the entire crime.

17. He has taken a stand that he is country man and not well conversant with legalities of the documents, however, the said stand cannot be accepted that since inception his movements are towards gaining illegal money by selling the properties to various purchasers is revealed from the record by ingnoring the lawful authorities. Thus, so far this applicant-accused is concerned his role is crystal clear and therefore, benefit of anticipatory bail cannot extended to him. His custodial interrogation are very much essential considering scope of the present crime. Moreso he is influential person as already influenced various public servants and cunningly used them various stages of the transactions.

18. At this stage a reliance can be placed upon in case of **Abdul Sajed S/o Abdul Sattar, Vs The State of Maharashtra, in Cri.Appln. No.190/2011 with Cri.Appln. No.194/2011 and Cri.Appln. No.208/2011 decided on 01.02.2011,** wherein Hon'ble Bombay High Court held in para 39 to 41 that,

“39. In the instant case, out of three applicants, the applicants namely Abdul Sajed and Khalil Khan are corporators. They have stated in their application about their political status. From perusal of the available record, it does not appear that the complainant is occupying any political post or he is actively involved in politics. It appears that he is involved in construction business. As stated earlier, the trial Court has observed that though Abdul Sajed and Khalil Khan are corporators, besides the same, Abdul Sajed is a builder by profession and Khalil Khan is running business i.e. agency to execute sale deeds. Therefore, it prima facie appears that registration of complaint is not out of any political rivalry or to malign image of the applicants. In the aforementioned judgments, the Apex Court has given some guiding principles / factors

to be considered while entertaining the application for anticipatory bail. One of the factors required to be considered is interest of the society or public interest. In the present case, the offences alleged against the applicants are serious in nature, in the sense that there is allegation of extortion and actual payment of Rs.10 lakhs to Abdul Sajed.

The public at large is bound to have interest in such matters to see that the investigation is properly carried out and conducted by the concerned Investigating Officer and for that, the concerned Police Officer should be given full right of investigation. The cases of extortion, ransom, theft, robbery etc. create panic in the society. Society has interest and further stakes to see that such offences are seriously investigated, the offenders are properly booked and appropriate action should be taken against them as permissible in law, to avoid such commission of offences in future. One of the factors which is required to be considered as per the judgment of the Apex Court in case of *Siddharam Satlingappa Mhetre (supra)* is whether the accused will again indulge in such offence in future. It has been argued by the Public Prosecutor before this Court that there are seven offences registered against Abdul Sajed and three out of them are registered under Sections 420, 468, 471 r.w. 34 of I.P.C. and one crime is registered under the Prevention of Corruption Act under Section 13(1)(5) r/w 13(2) of the said Act and u/s 109 of I.P.C.

(Emphasis supplied). Therefore, this important argument cannot be brushed aside and antecedent of applicants / accused needs to be taken into consideration as per judgment of the Constitution Bench in *Gurbaksh Singh Sibbia (supra)*.

40. The another factor required to be considered is whether the accused will influence the prosecution witnesses, if bail is granted. In the instant case, as stated earlier, certainly out of three accused persons two are corporators and their release would certainly have effect of tampering with prosecution evidence / witnesses.

41. Therefore, in the present case, the public at large would like to see that investigation is properly carried out, if necessary by custodial interrogation, as permissible in law.

Undoubtedly, the offences are serious in nature and the society has stake and interest to see that the accused are properly dealt with, in accordance with law”.

19. So far as another applicant-accused Babasaheb Nagargoje is concerned, he is also co-purchaser from the earlier owners with Bajirao Gaikwad and has no less role in the present case, therefore, he is at par with Bajirao Gaikwad and committed the crime as alleged by the prosecution. Therefore, he is also not entitled to get any benefit in terms of anticipatory bail.

20. So far as applicant-accused Baliram Pagar is concerned, he is the signatory to the said illegal plan, which was used by accused Bajirao Gaikwad and Babasaheb Nagargoje by executing those sale-deeds and therefore, his role in the crime is also since inception and hand in hand with applicant-accused Bajirao Gaikwad. There is no explanation by him under which provision the Grampanchayat Vilholi passed the resolution and approved the illegal lay-out and forwarded to the Authority for approval and under which authority he signed the said unauthorized lay-out. all such illegal activities will not only adversely affect the individual concerned with the transactions, but it will certainly cause serious prejudice to the well planned development of the Nashik District itself. He has misused his office and therefore, he is also not entitled for benefit of anticipatory bail as prima-facie case is made out by the prosecution against him.

21. So far as applicants-accused Baburao Rikame and Jayant Lilke is concerned they have caused the names of the purchasers in the revenue record by misusing their office and therefore, they are also not entitled for any anticipatory bail.

22. Before parting with these bail applications, it must be pointed out that, the Architect Shri. Bhor, who has prepared layout which is approved by NMRDA, has categorically mentioned that, the illegal lay-out is not prepared by him. In fact name of Architect is surprisingly missing in the said illegal lay-out. Thus, considering the above said facts and circumstances, the investigation of the crime is at the early stage, there are chances to add some accused in the crime, therefore, Investigating Officer is required the custodial interrogation of the applicants-accused. In the result, following order is passed.

ORDER

1. Anticipatory Bail Application Nos.54/2022, 111/2022, 112/2022 and 113/2022 are hereby rejected.
2. Interim anticipatory bail granted in Anticipatory Bail Application No.54/2022 dated 15.1.2022 is automatically cancelled.
3. Inform to concern police station accordingly.

Date- 31.01.2022

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