

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINALL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5931 OF 2004

Jitendra Purshottam Waikar .. Applicant

vs.

The State of Maharashtra ..Respondent.

Shri M.D.Parab, Advocate for the Applicant.

Shri D.S.Mhaispurkar, APP for the State.

CORAM : S.R.SATHE, J.

DATED : 31st December, 2004.

P.C. :

1. The applicant who is apprehending arrest in C.R.No.132 of 2004 registered at Alibag Police Station for offences punishable under section 405, 467, 468, 471, 472, 417 and 420 r/w. 34 of I.P.C. and whose earlier application for anticipatory bail has been rejected by the Court of Additional Sessions Judge, Raigad, has preferred this application under section 438 of Cr.P.C.

2. One Jayant Vitthal Abhyankar received one

notice from Gaon Kamgar Talathi Saja Alibag in the month of May 2004, whereby he was informed that his borther deceased Ramesh Vitthal Abhyankar has bequethed his property bearing house No.1999 situated at Sribag, Alibag, by virtue of Will to one Narsimha Shankar Narayanrao i.e.son of his (Jayant's) sister and whether he was having any objection in transferring the said property in the name of Narsimha Shankar Narayan Rao. He, therefore, started enquiry as to whether such will was executed and whether in the sale deed of the said property there was any mention for giving the property to Narsimha Shankar Narayanrao. He, therefore, submitted an application for certified copy of the will as well as the sale deed of the above mentioned property. On 11.5.2004 he received the certified copy of the sale deed. in para 4 of the said sale deed it was mentioned

As Jayant Abhyankar got some doubt about the sale deed he tried to obtain the original sale deed. For that purpose he contacted vendor Sanjeev Raut, who had sold the said house property to Jayant, brother of Ramesh by virtue of registered sale deed dated 7.5.1995. Sanjeev Raut gave xerox copy of the said sale deed of Jayant Abhyankar. In the said sale deed in para 4 it was mentioned

Thus, he noticed that the contents mentioned in the certified copy issued to him and in particular in para 4, the contents were altogether different than the contents of the original sale deed. he, therefore, tried to find out as to how this happened. For this purpose he also sent the documents to private handwriting expert. Having convinced that the original sale deed is tampered, on 22.9.2004 he filed the complaint against

Narsimha Shankar Narayanrao and the Sub-Registrar of Alibag. On that basis police registered the above mentioned offence and started investigating the matter. They also procured the xerox copy of the sale deed produced by purchaser Ramesh Abhyankar to various authorities and it was noticed that in those xerox copies also there was no mention of the contents of para 4 appearing in the certified copy that was issued to Jayant Abhyankar. Police therefore tried to find out original photocopy maintained in the Sub Registrar's Office, but they were informed that the said papers were missing. Police recorded the statements of several persons and ultimately arrested Narsimha Shankar Narayanrao as well as the peon in the Office of the Sub Registrar, Kirtikumar Ramlal Gujar who was at the relevant time serving in the Sub Registrar's Office submitted application for anticipatory bail before this Court and this Court (Coram: A.M.Khanwilkar, J.) directed the applicant to surrender before the appropriate Court and applied for regular bail. The learned APP has submitted that now he has been arrested by the police.

3. As present applicant Jitendra Waikar was serving in the office of Sub Registrar, Alibag, at the relevant time and the forged copy issued to Jayant Abhyankar was prepared and issued by him, apprehending that he will be arrested by police he filed an application for anticipatory bail before Additional Sessions Judge, Alibag. After hearing both the sides the Additional Sessions Judge rejected his application. Hence, applicant filed the present application before this Court.

4. I have carefully gone through all the police papers produced before me. From the perusal of the same one thing is certain that in the original sale deed, in para 4 there was absolutely no reference of Narsimha Shankar Narayanrao and the contents of the same were totally different. As the contents which are now appearing in the certified copy are in favour of Narsimha Shankar Narayanrao and the fact that initially he had also made an attempt to claim the said property on the basis of the will alleged to have been executed by Ramesh Abhyankar in his

favour Narsimha Shankar Narayanrao, was shown as accused no.1 in the above mentioned C.R. The fact that Narsimha Narayanrao subsequently withdrew his stand in respect of the will and even informed the Talathi that his name may not be entered in the CTS record in respect of the house no.1999, prima facie goes to show that the tampering in the City Survey office in respect of the sale deed in question must have been made at his instance.

5. From the statements of the witnesses, one is in a position to find out the procedure that is being adopted in the City Survey office whenever any application for certified copy is submitted. From the said statements it is clear that besides the concerned clerk working on the table of issuing certified copies, the peon attached to that section and the higher Officer in the City Survey Office, no one else can get access to the original documents or even to the photocopy of the original document which is maintained in the volume or register. So unless one joins hands with these persons, it is not possible to carry out alteration in the original photocopy. Prima

facie from the statements of the witnesses it appears that at the relevant time present applicant was incharge of the work of issuing certified copy and he had infact issued the copy in question. It is his contention that he gave the certified copy on the basis of the photo-copy which was in the record. However, we find that the said photocopy is infact tampered amd the circumstances prima facie indicate that the same may have been tampered few days prior to the time Ramesh submitted application to the talathi for entering his name in the City Survey Record. Naturally at that time the applicant and peon were having access to the original photo copy maintained in the office of Sub Registrar.

6. Incidentally, it must be noted that witness by name Dattatraya Balkrishna Patil, who has also signed the application/ statment of Narsimha Shankar Narayanrao wherein he has made a request that his name be entered in the City Survey record in respect of house no.1999 has stated that one application was submitted for certified copy dated 16.3.2004 in his handwriting. In that application

there is reference of registration No.82/95 which is infact the registration number of the original sale deed executed by Sanjev Raut in favour of Ramesh Abhyankar. Besides that some other index numbers are also mentioned in the said application. He has specifically stated that these particular numbers were written by him in the said application at the instance of the present applicant. The said application was infact of some other property and there was no need to mention other index numbers and in particular no.82 of 1995. So it appears that the applicant might be having some ill intention in doing so. Probably he must have done it with a view to show that these documents were called or seen by the concerned person after 16.3.2004. Besides this, as per the record, after the above mentioned certified copy was issued to Jayant Abhyankar, the complainant in the instant case, the original volume or register containing the photocopy of the original sale deed maintained by the Sub Registrar was found missing. The applicant had access to the said volume. So, prima facie there is enough material to connect

the applicant with the alleged crime and it is absolutely essential for the police to thoroughly investigate the matter and for that purpose to carry out custodial interrogation with the applicant.

7. The alleged offence is a very serious offence and the consequences of the same are far reaching. At this juncture it is not necessary to see whether the material collected by the police is sufficient to prove the charges that may be levelled against the applicant. What is to be seen is whether there is prima facie material to connect the applicant with the alleged crime or whether the police or any other person are trying to involve the applicant falsely. The considerations for regular bail application and anticipatory bail application are different.

8. In view of the above, I feel that the facts and circumstances do not warrant grant of anticipatory bail in favour of the applicant. Hence the application is rejected.

9. Parties to act on the authenticated copy
of this order.

(S.R.Sathe, J.)