

# **Abdul Sajed S/O Abdul Sattar vs The State Of Maharashtra on 1 February, 2011**

**Author: S.S. Shinde**

**Bench: S.S. Shinde**

crapln190.11

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO.190 OF 2011.

WITH  
CRIMINAL APPLICATION NO.194 OF 2011  
&  
CRIMINAL APPLICATION NO.208 OF 2011.

Abdul Sajed s/o Abdul Sattar,  
age 49 years, occu. business,  
r/o House NO.6-4-297,

Shahabazar, Near Chelipura  
Police Chauki,  
Aurangabad.

.. APPLICANT.

VERSUS

1. The State of Maharashtra  
through Begampura Police Station,

Aurangabad.

2. The Superintendent of Police,  
Aurangabad.

.. RESPONDENTS.

...

Shri V.D. Sapkal, Advocate for applicant.  
Shri S.G. Nandedkar, A.P.P. for State.  
Shri S.G. Ladda, Advocate to assist APP.

...

WITH

CRIMINAL APPLICATION NO.194 OF 2011

Abdul Rauf Khan @ Khalil Khan  
s/o Mohemood Khan,  
age 40 years, occu. business,  
r/o House NO.12-3-236,  
Mominpura, Lota Karanja,  
Aurangabad.

.. APPLICANT.

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VERSUS

1. The State of Maharashtra

2. The Commissioner of Police,  
Aurangabad.

.. RESPONDENTS.

...  
Shri V.J. Dixit, Sr. Counsel with  
Shri N.S. Ghanekar, Advocate for applicant.  
Shri S.G. Nandedkar, A.P.P. for State.

Shri P.F. Patni, Advocate to assist APP.

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CRIMINAL APPLICATION NO.208 OF 2011.

Shaikh Ibrahim Patel s/o Shaikh  
Hussain Patel, age 51 years,  
occu. agril.,  
r/o Naigaon,

Tq. & Dist. Aurangabad,  
at present residing at

Fajalpura,  
Aurangabad,  
Tq. & Dist. Aurangabad.

.. APPLICANT.

VERSUS

1. The State of Maharashtra  
through Begampura Police Station,  
Aurangabad.

2. The Superintendent of Police,

Aurangabad.

.. RESPONDENTS.

...

Shri Rajendra Deshmukh, Advocate for applicant.

Shri S.G. Nandedkar, A.P.P. for State.

Shri S.G. Ladda, Advocate to assist APP.

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CORAM : S.S. SHINDE, J.

1st FEBRUARY, 2011.

PER COURT:

1. These three applications have been filed by the applicants seeking anticipatory bail in connection with CR No.157/2010 registered at Begampura Police Station, Aurangabad for offence punishable under Sections 384, 420, 468, 504 r.w. 34 of I.P.C.

2. All the three applicants herein filed bail petitions before the Additional Sessions Judge-4, Aurangabad. By order dated 11.1.2011, their applications came to be rejected.

Hence, these applications seeking anticipatory bail.

3. The complainant Kadari Anwar s/o Kadari Jahoor, r/o Patel Planet, Jatwada Road, Aurangabad lodged complaint dated 14.12.2010 crapln190.11 with Begampura Police Station, Aurangabad. The English translation of the said complaint, as is supplied by the prosecution, reads thus:

"Date : 14/12/2010 COMPLAINT (FROM MARATHI TO ENGLISH) I, Quadri Anwar S/o Quadri Zahoor Ahmed, Age : 34 yrs Occupation- Business, R/o Patel Planet Jatwada Road, Aurangabad lodge complaint before the P.S. Begampura.

I reside along with my family at above mentioned address and do plotting business. My brother namely Ifteqar Quadri run the business in the name of Pragati Pvt. Ltd., I purchased the land situated at Himayat Nagar, Tq-Dist. Aurangabad survey no. 19/1 from its undisputed owner/original owner from 1956 namely Shri Sandu s/o Dhondiba Dube by giving paper publication. Our transaction has been completed by mutual consent and we are taking the benefit of such land. Corporator Abdul Sajed Abdul Sattar do not care to have any concerned with said land.

In Oct. 2010 I can't remember the date, in morning near about 11 to 12. Corporator Abdul Sajed Abdul Sattar called me and my brother by phone and asked to meet him at his home Chelipura, there he told that the land which you have purchased you have done illegal transaction and if you want to do plotting in green belt, you will have to pay me Rs.

25,00,000/- other wise people of corporation on my direction will lodge FIR & false complaint & restrained you and your brother from doing business. In your sale deed my friend namely Khalil has attached Fabricated N.A. and if same is given to the police, they will take action against you, saying this if you will not pay me money, you will face the consequences and in like manner threatened me. I was afraid of the threat given to me by Abdul Sajed Abdul Sattar and we asked him we need time to think & grant us the time. That to think & grant us the time. That after also we do not paid him extortion amount due to this they published false news in the daily news paper Aurangabad times & Aurangabad Express and influenced me by preparing the fabricated G.P.A. of Saeed Bin Salam in the name of Ibrahim Patel with an expectation that I will give money.

Person of corporator Abdul Sajed Abdul Sattar namely Sk. Raees Shaikh Razzak went to various offices and collected the personal documents and by showing the said faults concerned demands the money of extortion & to the person to us also threatened that give the money to Sajed Builder as per his demand other wise it will go hard to you. Then after also the persons of Sajed Builders continued to threatened and demanding the extortion and as I had not given them the extortion money, on 12/11/2010 at 3.00 p.m. building officer of corporation namely Sangewar came along with 20 to 25 persons and without any prior intimation & any notice or the Government Order, assaulted the labours at the plot and took the articles of the shed which was there for the purpose to give the shelter to the labour with them.

Abdul Sajed Builder in the meeting of standing committee in the first week of December without any proof raised the question that our land belongs to corporation & also published the fake & fabricated news in the daily news paper and to influenced us by sending town planning and development officer & building officer Sangewar, Shaikh Kader and Anwar Khan repeatedly. Amongst them building officer Anwar Khan used to come and at our land by the order of Sajid Builder used to tell, that you meet to Corporator. Abdul Sajid Builder and give them the money as per

their demand and get your issue solved.

Thereafter building inspector Anwar Khan and Shaikh Kadar without giving me any explanation and prior notice, took with them the six iron poles which were erected in my field. My watchmen Azim Khan Hayat Khan informed me about the incidence and on account of his information. I from my mobile phone called to Building Inspector Anwar his mobile phone he told me that we will negotiate and told to come at the garage of Rashid Bhai near collector office Masjid & hence we both brother went there in the evening. He informed us how his and Sajed Builders crapln190.11 extortion transaction works, and told us to give the money to Sajed Builder as per demand, he is dangerous person. Than after we both brothers met him two to three times and he used to inform from his phone to Sajed Builder about the negotiations of meeting. As decided in the said meeting we through the mediation of Anwar Khan on 10/12/2010 while going to house of Abdul Sajid Abdul Sattar, Chelipura expectations to get solved the matter by with request, I brought Rs. 1000000 (ten lakhs) with me and negotiated with him and handed over the said amount to him. Before taking the said amount Sajed Builder from, his mobile called there Corporator Abdul Rauf alias Khalil Khan, Ibrahim Patel and Shaikh Raees Abdul Razzak who were his companions helped him in the matter & all of them discussed with me. I requested to finish the matter in the amount of Rs. 1000000 which I was handed over to them but they told me that we will discuss again on the matter on 12/12/2010 on Sunday. On 12/12/2010 in afternoon on Second Meeting. Corporator Sajed Builder thinking that I am afraid from him told me that you have to pay Rs. 700000/- and told that the said amount in the said matter crapln190.11 they made fabricated N.A. of my land and he has to distribute to Shaikh Raees Abdul Razzak, Shaikh Ibrahim Patel who helped him in the matter and shown me the documents of properties and files of income tax of different persons and the fabricated N.A. of my land and narrated that how he traps the people. As Sajed Builder demanded me the huge amount and it after was not possible for me to give and hence also he will tease me in like manner, hence I with an intention to get caught him red-handed while accepting the extorted money, proceeded to negotiate further.

On 13/12/2010 afternoon at about 2 p.m. Anwar Khan called me on phone and asked me my address and came at my home and explained me to give the 7000000 and told to give Rs. 2000000 from the said amount on 14/12/2010 and went out. I have recorded all the negotiations of meeting and also of repeated calls of Anwar Khan and also given the complaint in police station against him.

As was decided yesterday, from the demanded extortion amount of 7000000/-

crapln190.11 Anwar Khan on 14/12/2010 was to come and I was not with the intention to give, I came to police station Begampura and informed about the said to the police inspector Shri Lahane he informed his seniors.

I am not willing to give the extortion amount and I want to caught red handed accepting the extortion amount.

Hence I prepared bundle of Rs. 20 Lakhs which like it in the manner. I used Rs.

40,000/- to which I kept Rs. One Thousand Note at top and at the bottom and in between the blank papers of the size of notes. In this I prepared 20 bundles, I informed this on the account of this information police called Two Panch Witness and informed the staff and planned to arrange the trap and send me to my house with the bundles of notes which I have prepared then after at my home in surroundings police arranged the trap. In afternoon at 12.45 p.m. building inspector of corporation Anwar Khan who was sent by Sajed Builder came to my home, negotiations took place between us and I gave him Rs. 20 Lakh (Twenty Lakh) bundles which I was prepared to give as an extortion money on that only the police ~~crapln190.11~~ who were in trap at my home and in surroundings attack & caught Anwar Khan red handed accepting the extortion amount.

Hence today dated 14/12/10 at 13.05 at my residential house Patel Planet corporator Abdul Sajed Abdul Sattar (Sajid Builder) & his companions namely Anwar Khan building Inspector Corporation, Aurangabad, Shaikh Ibrahim Shaikh Hussain Patel, Shaikh Raees Abdul Razzak, Corporator Abdul Rauf Khalil Khan through a conspiracy in my own lands matter prepared fabricated N.A. & demanded the extortion of Rs. 70,00,000/- ( 70 Lakhs) & from the said amount Anwar Khan building inspector get caught red handed while accepting the extortion amount of Rs. 20,00,000/-. hence I request to take legal action against therefore said persons & the persons prepared & fabricated N.A. By above said complaint in returned I read it is true to the best of my knowledge."

4. The applicant Abdul Sajed s/o Abdul Sattar, who has filed Criminal application No. 190 of 2011 seeking anticipatory bail, has ~~crapln190.11~~ contended in his application that he is elected Corporator of Municipal Corporation, Aurangabad and member of the Standing Committee and they raised issue regarding the said property in Standing Committee on 6.12.2010 and his intention is to protect the property of the Government i.e. Aurangabad Municipal Corporation. According to him, due to illegal acts of one Sandu Dhondiba Dube and the complainant, he had filed several complaints / applications to several Government Authorities to take appropriate action against them. It is his contention that the complaint is filed against him with an intention to malign his image in the society and in order to attack his social status. According to him, no specific allegation is levelled against him in the F.I.R., he is a reputed person in the society being elected Corporator of the Municipal Corporation, Aurangabad.

~~crapln190.11~~

5. Another Applicant Shaikh Ibrahim Shaikh Hussein Patel has contended that he is General Power of Attorney holder of Sayyadbin Salem, who sold 7 acres 7 gunthas land to Sandu Dhondiba Dube

and his brother. According to him, 2 acres and 30 gunthas land is still in possession of the legal heirs of Sayyadbin Salem and he tried to enter the names of the legal heirs in the revenue record and, therefore, he has been falsely implicated in the complaint. He further stated that no specific allegations are levelled against him in the F.I.R. According to him, nothing has been recovered from him and he is a reputed person in the society. Therefore, he prayed for grant of anticipatory bail.

6. Another applicant namely, Abdul Rauf @ Khalilkhan has contended that the case of the complainant is highly improbable regarding ransom as alleged in the F.I.R. There is no specific allegation in the F.I.R. against him.

crapln190.11 He contended that nothing has been recovered from him and he is falsely involved in the crime.

7. The learned Counsel Mr. V.D. Sapkal, appearing for the applicant Abdul Sajed s/o Abdul Sattar submitted that on 14.12.2010 one Kadari Anwar Ahmed s/o Kadari Juhur lodged the complaint in the Begampura Police Station making allegations that he is dealing in plots and purchased Sur.No.19/1 from one Sandu Dhondiba Dube. It is submitted that one G.P.A. holder of Sayyadbin Salem has filed complaint on 30th September, 2010 to the Commissioner of Municipal Corporation and it was mentioned in the complaint that by using forged N.A. order, property in green belt possessed by Sayyadbin Salem is sold. Copy of the said communication was marked to the present applicant for raising point in corporation. The Talathi of Aurangabad issued communication under the R.T.I. Act on crapln190.11 11.10.2010 stating that Sandu Dhondiba Dube has no land in Himayatbag, more particularly, in Sur No.19/1. The learned Counsel invited my attention to the said communication, which is placed on record. It is further submitted that applicant filed application to the Registrar on 11.10.2010 requesting to supply copies of sale deed of Sur.No.19/1. It was mentioned in the said application that the property is in green zone and no sale deed can be executed. On 19.10.2010, the applicant approached to the District Collector, Aurangabad requesting to supply original copy of the N.A. order which was used by Sandu Dhondiba Dube. On 18.10.2010 the applicant approached the Assistant Director, Town Planning requesting to supply of order dated 6.2.2010 which was referred in the N.A. order. On 19.10.2010, communication was received by the applicant from the Assistant Director, Town Planning stating therein that the order dated 6.2.2010 is not issued by the crapln190.11 Department and therefore, copy cannot be given. On 20th October, 2010, the applicant made complaint to the District Collector intimating that one Sandu Dhondiba Dube is using forged N.A. order and selling property with the help of some agent. It was also brought to his notice that copies of all N.A. Orders from 1.4.2010 to 18.10.2010 be made available.

It was also mentioned that the Government is put to loss of crores of rupees and, therefore, action be taken. On 30th October, 2010 the applicant issued communication to the Assistant Registrar, requesting him that copies are not being supplied to him. On 18.11.2010, the applicant issued reminder to the Collector. On 20.11.2010, the applicant requested the Administrative Officer of the Corporation that land of Kham river is being encroached and, therefore, offence be registered against the complainant and Sandu Dhondiba Dube. On 22.11.2010, the applicant approached to the Administrative Officer crapln190.11 requesting him that 5 acres land of river i.e. (Gal Per) is being encroached by the complainant and one Sandu Dhondiba Dube, bogus N.A. order is prepared and



plots are made, therefore, offence be registered against the concerned persons. On 23.11.2010 again he wrote letter to the Collector stating therein that when several requests are made, no action is taken. Therefore, it seems that in collusion with Officers of the Collectorate, the complainant is doing illegal business of plotting and using 5 acres land of corporation. It is further argued that the GPA holder of Sayyadbin Salem came to know that the complainant got prepared forged map and, therefore, he filed complaint dated 22.11.2010. It is the case of the applicant that when the corporation authorities were taking lawful action against the complainant, the complainant managed the police officers and brought pressure on corporation. On 25th November, 2010, there was communication from crapl190.11 the Police Officer directing the officers of the Municipal Corporation to remain present.

It is further case of the applicant that there were several disputes between Sandu Dube and the complainant and GPA of Sayyadbin Salem and, therefore, paper publication was issued through Advocate on 22.11.2010 in almost all the papers.

ig It was mentioned in the paper publication that plots are being sold by using forged N.A. order. It was also mentioned that the property is in green belt and Sandu Dube has no property in Survey No.19/1. On 2.12.2010, the present applicant made request to the Collector that action be taken against Sandu Dube and the complainant for preparing forged N.A. order. On 3.12.2010, the present applicant approached the Commissioner, Municipal Corporation, making grievance that the property in green belt is being sold by the present complainant and Sandu Dube by using forged N.A. order and, therefore, offence be registered in City Police Station.

crapl190.11 On 4.12.2010, complaint was submitted to the Police Station by Shaikh Ibrahim Shaikh Hussain. It was mentioned that there is stay granted by the Deputy Superintendent of Land Records to the map prepared by him. On 4.12.2010 complaint was made to the Administrative Officer making grievance that Anwar Kadari is encroaching on river land as well as on the land of Corporation. On 4.12.2010, the applicant approached the Police Commissioner as well as Divisional Commissioner making reference of his earlier correspondence and requested for immediate action. On 5.12.2010 Shaikh Ibrahim approached the Commissioner of Police and requested for taking action against the complainant stating that the property of the corporation is being grabbed by him with the help of bogus N.A. order and the same be stopped immediately.

8. In General Body meeting of the crapl190.11 Corporation, the subject of illegal plots and encroachment was discussed. The Sabhapati passed order for registration of crime. On 6th December, 2010, Shaikh Ibrahim approached to the Commissioner making similar grievance.

The applicant made the grievance in the meeting on 6.12.2010. It was reflected in the newspaper dated 7.12.2010. He raised point that on the basis of forged N.A. order, 115 plots are sold and, therefore, action be taken. On 7.12.2010 Shaikh Ibrahim approached to the Commissioner of Police and requested to lodge criminal complaint in City Chowk Police Station. On 7.12.2010 the Commissioner, Municipal Corporation wrote a letter to the District Collector and informed that bogus N.A. order is prepared and this matter falls within the jurisdiction of the Collectorate. It was requested that F.I.R.

should be registered against the complainant and Sandu Dhondiba Dube and all the concerned.

On 8.12.2010 application was filed by the crapl190.11 Officers of the Corporation making complaint to the Police Station. On the same date, the applicant approached to the Collector reiterating his grievance. On 10.12.2010, the applicant approached to the Divisional Commissioner as he being the highest officer of the region and brought to his notice that all illegalities are being committed by the office of the Registrar and Collector and sale deeds are being executed by Sandu Dube and the complainant. On 13.12.2010, again applicant approached to the Collector and also the Registrar. It is argued further that the Collector verified the fact from their record and on 25.4.2010, directions are issued to register crime against the complainant. It is further argued that not only directions are issued by the Collector to register offence against the complainant but, directions were issued to the Dy. Superintendent to look into the matter in respect of map which was prepared at the instance of the complainant.

crapl190.11 On 12.1.2011 the Superintendent of Land Records cancelled earlier map dated 28th April, 2010 and issued fresh map. Further details are brought to my notice by the learned Counsel for the applicant. He invited my attention to the pleadings in the application and submitted that when the applicant ig has approached to several authorities to take action against the complainant and one Sandu Dhondiba Dube for preparing forged N.A. order and for encroaching and selling plots on the Corporation land, which is in green belt, the question of asking for ransom or alleged extortion of money does not arise. According to the learned Counsel for the applicant, the applicant raised this issue in the Corporation meeting and therefore, there is no any reason why he will ask for any amount from the complainant.

9. It is further submitted that the applicant crapl190.11 herein has been elected as Corporator of Aurangabad Municipal Corporation for second consecutive term, he is Vice President of District Congress Committee since 12-13 years.

He is elected as opposition leader from 2006-07 and 2007-08. Applicant was elected as Chairman of Standing Committee of Corporation from 2008-09, 2009-10 and right now he is Gat Neta in the Corporation as recognized by the Divisional Commissioner, Aurangabad and, therefore, to malign his image, false complaint is filed by the complainant. He is not beneficiary nor has any interest in the transaction of the complainant and section 420 of I.P.C., cannot be attracted. On the contrary, it can be attracted against the complainant. The CD prepared by the complainant does not disclose that the applicant demanded Rs.70 lakhs. It is further submitted that though it is stated by the complainant in the F.I.R. that he is owner of purchasing the land from Sandu Dube, the crapl190.11 record shows that he had purchased only 10 gunthas of land from Sandu Dube. It is further submitted that the said land is in green belt and also to the extent of 5 acres, the Corporation is owner of the said land.

Though the applicant approached to various authorities, no attention was given to his complaint.

ig However, now offence is registered against the complainant and Sandu Dhondiba Dube recently for preparing forged N.A. order.

The learned Counsel further submitted that extortion is contemplated u/s 384 of the I.P.C., which can be made in secrecy.

However, the record shows that said provision is not satisfied. The applicant attended the police station every day between 9.00 a.m. to 2.00 p.m. from 31.12.2010 to 10.1.2011. In case, bail is not granted to the applicant, his prestige of the applicant will be lowered down in the society and his political career will be damaged. It is further submitted that in fact, all the persons those who can be crapl190.11 witnesses against the complainant and illegal activities of complainant and Sandu Dube, are made accused with the help of police only with a view that they should not open their mouth.

If the arrest of the applicant is caused, in such circumstances the purpose of the complainant will be satisfied. The Counsel further submitted that already offence is registered against the complainant and Sandu Dhondiba Dube u/s 420, 464, 467, 468, 471, 182(B) r/w 34 of I.P.C. The learned Counsel further invited my attention to the annexures annexed to the application, pleadings therein and the grounds taken in the application and submitted that there is no question of any demand from the complainant as alleged in the complaint. It is further submitted that the Fragmentation Act is applicable in the Corporation Limit. He further submitted that all the sale deeds are bogus and the same are prepared on the basis of bogus N.A. order which was prepared by the complainant and crapl190.11 Sandu Dube. It is further submitted that when the applicant raised the issue in the meeting of the Corporation on 6th December, 2010, he did mention the name of Anwar Khan that he might have been negotiating the matter with the complainant. He further invited my attention to the correspondence made to various authorities and also all annexures and submitted that the application of the applicant deserves to be allowed.

10. Mr. Sapkal, learned Counsel for applicant invited my attention to the judgment of the Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and ors., reported in 2010(12) SCALE 691 and submitted that the scope of Section 438 of Cr.P.C. has been explained in detail in the said judgment. He relied on the following observations and guidelines laid down by the Apex Court in the aforesaid judgment:

crapl190.11 "..... 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 case.

depend on facts and circumstances of each 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.

11. Mr. Dixit, learned Senior Counsel appearing for the applicant Abdul Rauf Khan @ Khalil Khan s/o Mahemood Khan submitted that the this applicant has been falsely involved in the crime. There is no specific allegations against the applicant. On the contrary, the complainant himself alongwith Sandu Dube, has been involved in the preparation of forged N.A. order and in selling illegally the land of Corporation.

When the N.A. order is part and parcel of the sale deed, there is no question of inserting the same later on. It is the complainant who in collusion with others forged the N.A. order and got the sale deed executed. The allegations of the complainant about demanding extortion of Rs.70/- lakhs is highly improbable since the land in question was purchased by the complainant for Rs.2,30,000/-

only. There is no evidence of involvement of applicant in the crime and the complainant has implicated the applicant falsely with the aid of police. The learned Counsel for the applicant, therefore, submitted that the applicant deserves to be released on anticipatory bail in the said crime.

crapln190.11

12. Mr. Rajendra Deshmukh, learned Counsel appearing for Applicant Shaikh Ibrahim Shaikh Hussein Patel has submitted that he is General Power of Attorney holder of Sayyadbin Salem, who sold 7 acres 7 gunthas land to Sandu Dhondiba Dube and his brother Dhanaji.

According to him, 2 acres and 30 gunthas land is still in possession of the legal heirs and the present applicant tried to initiated his work in respect of entering the names of the legal heirs in the revenue record and, therefore, he has been falsely involved in the complaint. He further stated that no specific allegations are levelled against him in the F.I.R. It is submitted that when the applicant got knowledge about the forged N.A. order, the applicant has filed so many complaints before various authorities including Divisional Commissioner, Municipal Commissioner and police, making grievance about the forged documents prepared by the complainant to grab the said land. The crapln190.11 learned Counsel submitted that the Sandu Dube and his brother has already sold his entire property.

13. The learned Counsel for the applicant submitted that the applicant has no concern with the alleged offence, he being G.P.A. holder of Sayeed Bin Salem Chous, he was trying to protect the interest of the legal heirs of Sayeed Bin Salem Chous. When he noticed the forgery committed by the complainant and others, he made complaints against them. Therefore, he is falsely involved in the crime. He submitted that the real culprits are Sandu Dube and the complainant, but yet, no action is taken against them. He submitted that recently, complaint regarding the misdeeds of the complainant has been lodged by the concerned authorities, who noticed that forged N.A. order has been prepared by them. The learned Counsel further submitted that the applicant crapln190.11 has been granted interim protection and the applicant is a reputed person in society, he is a law abiding citizen and will not flee from justice if he is granted bail. The Counsel submitted that in view of the peculiar facts and circumstances involved in this matter, the applicant deserves to be released on anticipatory bail by imposing certain conditions, deemed fit.

14. The learned counsel Mr. Ladda appearing for the complainant submitted that, there are direct allegations against all the accused persons. The contents of complaint specifically speaks about the meeting of mind and conspiracy committed by all the accused.

It is further submitted that, the N. A. orders were inserted by accused Khalil Khan through whom complainant got executed sale deeds and who was aware about the documents and about the transaction entered into by the complainant with Sandu Dube. The said crapl<sup>n</sup>190.11 document is inserted with the connivance of accused Mr. Abdul Sajed. It is further submitted that, it cannot be said that Khalil Khan has no relation with the accused Abdul Sajed. The learned counsel submitted that, out of original survey No. 19 Sandu and his brother have purchased 4 Acres 38 Guntha land on 12.05.1966 by registered sale deed. The original land bearing Sy. No. 19 was belonging to one Mr. Sayyadbin Salem Chaus. On 12.05.1966 4 Acres 38 1/2 Guntha land was purchased by Sandu and Dhanaji. The said portion is on Eastern side. The second sale deed was executed on 22.05.1970 in favour of Sandu and Dhanaji. The said land was sold by Sayyadbin Salem Chaus, the area of said land was 02 Acre 08 Guntha. Said portion was on Western side. The total area which was sold to Sandu and Dhanaji was 07 Acres 06 1/2 Guntha out of 09 Acre 37 Guntha. The 02 Acre 30 1/2 Guntha land remained with the original owner.

It is further submitted that, by mutation crapl<sup>n</sup>190.11 entry No. 85 on 31.12.1970 the Sy. No. 19 was divided into Sy. No. 19/1 and 19/2. The Sy.

No. 19/1 is to the extent of land 07 Acre 06 1/2 guntha purchased by Sandu and Dhanaji and remaining land 02 Acres 30 1/2 G is given Sy.

No. 19/2 which remained with the original land owner. The name of Sayyedbin Salem Chaus is deleted vide mutation entry NO. 67 from Sy.

No. 19/1. It is further submitted that, remaining land from Sy. No. 19/2 was sold by Sayyedbin Salem Chaus on 25.02.1986 to the extent of 41R in favour of one Mr. Habib Ahemmad by sale deed day book No. 1152. By another sale deed 41R land was sold to one Mr. Habib Hasan by sale deed day book NO. 1790 on 25.07.1990. Remaining 28 1/2 guntha land was sold by the original land owner on 10.06.1994 by sale deed Day Book No. 1529.

Therefore, the learned counsel for the complainant would submit that, the entire land was sold by the original land owner Sayyadbin Salem Chaus under five sale deeds and last crapl<sup>n</sup>190.11 transaction was on 10.06.1994. Therefore, after 10th June, 1994, the original owner did not possess any land. The counsel submitted 1/2 Guntha land belongs to Sandu and Dhanaji.

15. The learned counsel invited my attention to page 38 of the compilation in Criminal Application No. 208/2011 and submitted that, alleged power of attorney given in favour of one of the accused Shri Shaikh Ibrahim Shaikh Hussain Patel is on 09th December, 2010.

According to said Shaikh Ibrahim Shaikh Hussain Patel, the said power of attorney is given by the legal representatives of Sayyedbin Salem Chaus. The learned counsel invited my attention to page

40 of the compilation and submitted that, it is the case of the legal representatives of Sayyedbin Salem Chaus as reflected in their complaint that, the revenue entries i. e. 7/12 extracts are not in their name since they could not take steps to enter the revenue entries, because of illiteracy and weak economical position and, therefore, they are giving this power of attorney in favour of Mr. Ajalkhan and Gulamkhan and Shaikh Ibrahim Shaikh Hussain Patel. The counsel for the complainant submitted that, the legal representatives of Sayyedbin Salem Chaus having no concern or any claim over the property in Sy. No. 19/2 since entire property was sold by the Sayyedbin Salem Chaus before his death i. e. 10.06.1994. Learned counsel submitted that, one of the accused Mr. Shaikh Ibrahim Shaikh Hussain Patel has no concern whatsoever with the land from Sy. No. 19/2.

Suddenly started addressing letters to the authorities from the month of September, 2010.

According to the counsel for the complainant when the power of attorney is given on 09th December, 2010, there is no question of addressing any letter by Shri Shaikh Ibrahim Shaikh Hussain Patel from the month of September, 2010 to the various authorities.

According to the counsel appearing for the complainant, Shaikh Ibrahim Shaikh Hussain Patel got the interest created. The counsel invited my attention to the page 38 of the compilation i. e. first page of the power of attorney document and submitted that, Shaikh Ibrahim Shaikh Hussain Patel has purchased the stamp of Rs. 2,05,500/- and created his interest, though the entire land was sold by deceased Sayyedbin Salem Chaus before June 1994. His legal representatives have no right to give power of attorney to the Shaikh Ibrahim Shaikh Hussain Patel, however, it is collected to create such documents so as to create interest in the said property. Learned counsel submitted that, so far 07 Acres 06 1/2 Guntha land from Sy. No. 19/1 is concerned the complainant entered into agreement to sell on 21st April, 2010 with Sandu Dhondu. It is submitted that, after agreement to sell was entered for the area of 05 Acres 10 Guntha from Sy. No. 19/1, paper publication was given on 20th May, 2010 in the news paper "Daily Lokmat" stating there in that complainant has entered into agreement to sell and if anybody has objection about the said transaction, said can be objected within one week from the date of publication. It is further submitted that, as nobody has objected for the said agreement to sell or transaction including the applicants herein. Therefore, from 11th June, 2010 to 20th August, 2010, the complainant purchased 02 Acres 20 Guntha land through 20 sale deeds. It is the submission of the learned counsel for the complainant that, as per the availability of finance he has purchased said land through 20 sale deeds.

Learned counsel submitted that, he has paid around Rs. 1,34,50,000/- to Sandu towards consideration. The learned counsel submitted that in all the sale deeds, there is no mention about N. A. There was no any reason for the complainant to put bogus N. A. orders in the sale deeds. No N. A. order attached to any of the sale deeds. The learned counsel invited my attention to page 39 of the compilation in Criminal Application No. 208/2001 to contend that no N. A. order was attached to any of the sale deed. Learned counsel further submitted that, the stamp which was purchased and used for sale deed, on top of said stamp paper it is written that stamp is purchased from Abdul Samikhan. Said Abdul Samikhan i. e. stamp vendor is real brother of accused Kahlil

Khan. Mr. Khalil Khan accused is service provider and he uses word "K.K." for identification. The learned counsel submitted that, after registration of sale deed in the Sub Registrars Office, one copy of the original documents was returned to the complainant and other copies were sent for work of scanning. The work of scanning is given on contract by the Government to Mr. Khalil Khan i. e. one of the accused on contract basis. It is the contention of the complainant that, out of remaining documents which were given by the Sub Registrar Office to Khalil Khan, out of two copies of 7/12 extract, one was removed by said Khalil Khan and the another copy of document i. e. identity proof was also removed and the alleged document of N. A. is inserted by said Khalil Khan in the said portion.

According to the learned counsel for the complainant, the word "Akar" refers to agricultural land and said was written in said documents and, therefore, there was no question of inserting bogus N. A. orders by the complainant in the documents of the sale deed. These documents as stated herein before are inserted by the said Khalil Khan by removing one copy of 7/12 extract and the copy of identity proof. Therefore, the counsel for the complainant would submit that, the said act of the Khalil Khan is with connivance another accused Mr. Abdul Sajed. The learned counsel further submitted that, when the complainant noticed that the bogus documents of N. A. are inserted by the said Khalil Khan, he lodged complaint with the Collector on 26.11.2010. The learned counsel invited my attention to para 43 of the order of the Sessions Court and submitted that, the Sessions Court has taken a note of all the sale deeds and on verification of sale deeds found that no such N. A. order is there at all and recorded that unless and until said bogus N. A. was original sale deeds in the copies of sale deed taken no found place. The learned counsel further submitted that, there is no record showing that land from Sy. No. 19/2 belongs to Corporation or State Government.

The learned counsel also submitted that, one Mr. Zanzan employee of Corporation has stated that, the said land does not belong to Corporation. The learned counsel further submitted that, taking into consideration sale deeds and also transcription produced by the complainant and other material brought on record by the prosecution the Sessions Court has cancelled the interim bail granted to the three applicants/accused. The learned counsel invited my attention to the judgment of this Court in the case of Gabriel Joseph v. Feroz Gulam Sarvar Khan and others, reported in 1992 Cri. L. J. 458 and more particularly para 4 and 8 of the said judgment. The counsel also invited my attention to the reported judgment of this Court in case of State of Maharashtra Vs. Santosh Hraman Urankar & others reported in 2005 (1) Bom. C. R. (Cri.) 513 and para 5 and 13 in particular. Learned counsel also invited my attention to another judgment of the Gujrat High Court in case of Jitendra Narayanbhai Rajgor v. State of Gujrat reported in 2005 Cri. L. J. 2371 and more particularly para 35 of the said judgment. Learned counsel further invited my attention to the reported judgment of the Hon'ble Supreme Court in case of Naresh Kumar Yadav Vs. Ravindra Kumar and others reported in 2008 All SCR 91 and submitted that the power exercisable under S. 438 is some what extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty, then power is to be exercised under Sec. 438.

16. Therefore, the counsel for the complainant submitted that, the Sessions Court has already refused the anticipatory bail to the applicants and, therefore, this Court may not entertain the applications of the applicants for the anticipatory bail.

17. The learned counsel Mr. Patani appearing in one of the application for the complainant submitted that, the conversation between the complainant and accused persons from 1 and 1/2 month before lodging the complaint is recorded crapl<sup>n</sup>190.11 by the complainant and said is handed over to the concerned I. O. investigating into the matter. The counsel submitted that, said conversation between the complainant and accused persons has not been denied by the applicants/accused. They have also not denied the telephonic recording of conversation between the complainant and accused persons.

It is submitted that for identification of voice custodial interrogation of the accused applicant is necessary. The learned counsel submitted that, the permission for N. A. was sought by the complainant from the Collector for 13445.11 square meters. However, the applicants are misleading and trying to show that the N. A. permission was sought for 4H 02R. The counsel also submitted that, there is no substance in the contention of the applicants that, the signatures of Mr. Dube are forged. It is further submitted that, the contention of the applicant is that by way of Khasra Patrak, the Corporation is owner of the crapl<sup>n</sup>190.11 said land. However, in Khasra Patrak no name of the Corporation or Government is shown.

The counsel invited my attention to the letter written by Deputy Commissioner (CIDCO) to the Commissioner, Municipal Corporation, Aurangabad in which it is specifically stated that, the Corporation is no way connected with the land from Sy. No. 19/1 situated at Himayat Nagar. The counsel further submitted that, since the applicants are influential persons and two of them are corporators , they have influenced the authorities and they are trying to influence the authorities and creating record against the complainant. The complainant is not any political personality.

The learned counsel invited my attention to the reported judgment of this Court in case of Rajesh Kumar Vs. State of Maharashtra reported in 200 All MR (Cri) 1739 and more particularly para 3 of the said judgment and submitted that, the anticipatory bail should be granted only in appropriate cases and same should not crapl<sup>n</sup>190.11 be granted in the cases like one in hand. The counsel further submitted that, the details about the phone calls is called by the concerned I. O. who is investigating into the matter. The counsel therefore, submitted that, the applicant/accused does not deserve to be released on anticipatory bail. The Sessions ig Court taking into consideration entire material brought on record has rejected the application for anticipatory bail filed by the accused. Therefore, this Court may reject the application for anticipatory bail.

18. The learned A.P.P. Mr. Nandedkar appearing for the State invited my attention to the contents of the complaint and submitted that serious allegations are made in the complaint, which need to be investigated thoroughly and for further investigation, custodial interrogation of the applicants / accused is necessary. It is further submitted that when interim protection was granted to the crapl<sup>n</sup>190.11 applicants, though they attended the police station, they did not cooperate with the investigating machinery. The learned A.P.P. further submitted that the applicant / accused Abdul



Sajed has taken an amount of Rs.10 lakhs from the complainant as alleged in the complaint and he has accepted the said amount for himself as well as on behalf of other co-

accused and also demanded further amount of Rs.70 lakhs.

19. The A.P.P. submitted that the offences alleged against the applicants are serious in nature, since huge amount was demanded as extortion. He submitted further that the land in dispute does not belong to Government or Corporation as the same fact is stated by Mr. Shivaji Zanzan, Administrative Officer of the Aurangabad Municipal Corporation, Aurangabad.

He invited my attention to the statement of Mr. Zanzan and submitted that Mr. Zanzan has stated that the land is agricultural land and crapl190.11 it cannot be used for plotting as stated by the Planning Department of the Corporation.

The learned A.P.P. submitted that the applicant Shaikh Ibrahim became G.P.A. holder of heirs of Sayeedbin Salem Chaus only on 9th December, 2010. Therefore, there was no question of having his any interest in the said land prior to that date. He further submitted that the statements of Talathi and Tahsildar are recorded and in their statements, they have stated that Sayeedbin Salem Chaus and his legal heirs have no concern with the said land since the same has been sold long back and there is no any revenue record showing their name and, therefore, their G.P.A. given to Shaikh Ibrahim is of no consequence. The learned A.P.P. submitted that as many as seven offences are registered against the applicant Abdul Sajed and three of them are of similar nature as that of the offence alleged in the present complaint. The A.P.P. further crapl190.11 submitted that the applicants herein are influential persons and if they are released on bail, they may tamper with the prosecution evidence and threaten the prosecution witnesses. He invited my attention to the arguments advanced before the Sessions Court and submitted that the Sessions Court, after appreciation of the material brought on record, has recorded correct findings and rejected the applications for anticipatory bail. Therefore, he prayed that, applications may be rejected.

20. The learned Counsel Mr. Rajendra Deshmukh, for the applicant in Criminal Application No. 208 of 2011 further invited my attention to the ground Nos.VII and XI in the application and submitted that possibility of tampering so called conversation cannot be ruled out. He further submitted that Regular Appeal No.76 of 1996 has been decided by the Additional District Judge, Aurangabad in respect of the crapl190.11 said land.

21. Mr. Sapkal, learned Counsel for the applicant in Criminal Application No.190 of 2011 invited my attention to the paragraph 42 of the compilation and submitted that on 12th January, 2011, the Superintendent of Land Records cancelled the earlier map dated 28th April, 2010 and issued fresh map. In this map, it is clearly mentioned that the land which was shown to the extent of 2 Hecter and 24 Aar (5 acres and 14 Gunthas) is cancelled.

This clearly shows that this was alluvial land.

22. Mr. Dixit, learned Senior Counsel appearing for the applicant in Criminal Application No.194 of 2011 invited my attention to para 23 of the application and submitted that though the complainant purchased 10 Gunthas of land, documents show that the complainant wanted N.A. of the entire crapl190.11 land, though he had no concern with the same.

23. I have given due consideration to the rival submissions of the parties. I have also perused the applications, annexures thereto, the order passed by the Sessions Court and also the investigation papers as were made available for perusal.

24. It appears that initially, interim protection was given to the applicants. The Sessions Court heard the applications for anticipatory bail finally and on appreciating new material produced on record by the parties, rejected the applications. It further appears that the Sessions Court had seen original sale deeds and also transcript which was produced before it also the investigation papers and refused to grant bail to the applicants.

25. At this juncture, it would be appropriate crapl190.11 to refer to the judgment of the Constitution Bench of the Hon'ble Supreme Court in case of Shri Gurbaksh Singh Sibbia and others vs. State of Punjab, reported in (1980) 2 SCC 565, wherein the Apex Court has laid down some guiding principles / factors to be taken into consideration while entertaining application u/s 438 of Cr.P.C. for anticipatory bail, which are as follows:

"31. 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 crapl190.11 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."

26. It is further held by the Apex Court, thus:

crapln190.11 "35. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted.

The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe"

shows that the belief that the

applicant may be so arrested must be  
founded  
'fear'  
ing on reasonable grounds.

is not 'belief', for which reason Mere it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested.

The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for crapln190.11 anticipatory bail will be as large as, at any rate, the adult populace.

Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely."

27. The Hon'ble Supreme Court, in Siddharam Satlingappa ing Mhetre's case (supra, observed that following factors are required to be taken into consideration while dealing with anticipatory bail:

"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 <sup>crapln190.11</sup> 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 <sup>crapln190.11</sup> 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.

123. The arrest should be the last option and it should be restricted to those <sup>crapln190.11</sup> exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

124. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated material and circumstances on record.

by other

125. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications."

28. The Sessions Court has elaborately considered the arguments of the Counsel appearing for the respective parties in three bail petitions. It further appears on perusal of the judgment and order of the Sessions Court that the Court has gone through voluminous documents in the compilation filed by the applicant Abdul Sajed and others and also the investigation papers, the documents produced by the complainant as well as original sale deeds and also the transcripts.

In paragraph 25 to 27 of the judgment, the Sessions Court has referred the judgments of the Hon'ble Supreme Court as well as this Court. In para 30, the Court has noted that the accused Abdul Sajed and Khalil Khan are corporators of Municipal Corporation, Aurangabad. Besides the same, it seems that Abdul Sajed is a builder by profession and Khalil Khan is running a business i.e. agency to execute sale deeds. The trial Court has perused the original sale deeds and found that in those original sale deeds, the said bogus N.A. Order is not there, which has been placed in the copies of the sale deeds. The Court has considered the arguments of the parties about the preparation of forged N.A. order and insertion of the same in the copies of the sale deeds in paragraph 31 and 32. In para 35, the Court has recorded that the N.A. order of the disputed property, which finds place in the copies of the sale deeds produced in the compilation, is apparently forged and bogus document. Because, original N.A. order is in the name of Abdul Gani, which bears the signature of the Collector, while bogus N.A. order does not bear signature of Collector and it only speaks that as per the order of Collector, it was issued. In para 36, the Court observed, thus:

"But in this regard the original sale deeds produced by the complainant for verification of this Court, show that, in those sale deeds no such N.A. order is there at all. Unless and until said bogus N.A. order was in original sale deed, in the copies of sale deed, it could not have found place. But it is there in the copies of sale deeds obtained by Abdul Sajed and it is specific allegation of complainant that, accused Abdul Sajed got it prepared from Sk. Ibrahim and inserted it in the copies of sale deed through accused Khalil Khan through whom complainant got those sale deeds registered. The original sale deeds produced by the complainant show that, complainant got those sale deeds registered through the agency of accused Khalil Khan. Therefore, looking to these facts, there is every possibility that, Khalil Khan was having knowledge about said transaction of complainant and his brother with Sandu Dupe and in order to extract money from complainant, the possibility cannot be ruled out prima facie that, Khalil Khan with the help of some employees of Sub Registrar's office, might have got inserted said bogus N.A. order in the copies of sale deeds in favour of complainant and his brother. It appears that when complainant noticed this fact from accused Abdul Sajed who had called the complainant at his house to demand ransom, complainant had immediately filed complaint about the filing of bogus N.A. order in the copies of sale deeds to Collector on 26.11.2010."

29. Therefore, in para 37 the Court has reached to the conclusion that in the copies of sale deeds, N.A. order was inserted by somebody and needle of suspicion points crapl190.11 towards accused Abdul Sajed, Khalil Khan and Sk. Ibrahim. The trial Court, in paragraph 38, has considered the demand of Rs.10 lakhs by Abdul Sajed and version of the complainant about what transpired between Abdul Sajed and himself. In para 39, the Court has reached to the conclusion that possibility of attaching bogus N.A. order in the copies of sale deeds in favour of the complainant and his brother by Khalil Khan, on the say of Abdul Sajed cannot be ruled out. In para 40, the Court has recorded, thus:

"40. Therefore, if the said contents of complaint are considered with the above facts, then certainly, prima facie it can be concluded that, in order to extract money from complainant, said bogus N.A. order might have been inserted in the copies of sale deeds by accused Abdul Sajed through Khalil Khan. That is why said bogus N.A. order nowhere finds place crapl190.11 in original sale deeds."

30. In paragraphs 41 to 44, there is discussion about the contents of the complaint filed by the complainant. In para 45, the trial Court, on the basis of the contents of the complaint, has referred to the conversation between the complainant and co-

accused and recorded conclusion that in the light of said contents of complaint and recording of conversation by the complainant, the transcription of conversation prepared by the police under panchanama needs to be considered. In para 46, the Court has referred to the panchanama of conversation prepared by police after running the C.D., which shows prima facie that, it is the conversation of the meetings with Anwar Khan dated 9.12.2010, meeting dated 10.12.2010, 11.12.2010, 13.12.2010 and 14.12.2010. Similarly, it also speaks about recording of 29 telephonic calls between complainant and Anwar Khan on 9.12.2010 crapl190.11 to 14.12.2010. It also speaks about the conversation of the meeting dated 12.12.2010 between complainant, Abdul Sajed, Ibrahim Patel, Khalil Khan, Anwar Khan and Sk. Rais.

Said conversation was for near about two hours thirty eight minutes and thirty five seconds.

It further appears that the trial Court has perused the said transcription of conversation between complainant and Abdul Sajed minutely and in para 47, the Court has reached to the conclusion that prima facie it can be concluded that there was meeting between Abdul Sajed and the complainant and it was in respect of land purchased by the complainant and his brother. The Court has recorded that it appears from the transcription that the complainant told accused Abdul Sajed that, the amount is very huge and he requested Abdul Sajed to minimize that amount. It further shows that Abdul Sajed told the complainant that earlier, when complainant left his house, Sk. Ibrahim and accused Khalil Khan had come crapl190.11 to him and Khalilkhan told that he wants to purchase 2 Acre 30 Guntha land. It further speaks that 2 Acre 30 Guntha land is not owned by Sandu Dhondiba and it further speaks that, how Sandu Dhondiba sold the land without its title. It also speaks about meeting of Abdul Sajed with Balaji Kshirsagar about said 2 Acre 30 Guntha land. It also speaks that, police informed him about the ransom demanded by him and on that, he told police to register crime against him and further told that, within two/three days he will be released on bail.

31. In para 38, the Court has recorded that the said transcription of conversation and recorded that the said transcription speaks further that accused Sajed asked the complainant to settle the issue immediately since he is also a Muslim person. On that, complainant told that, it would not be better to fight with each other and the amount demanded by the accused is big amount.

crapln190.11

32. In para 50 of the judgment, the Court observed, thus:

"50. .... Therefore, if said transcription is considered, then certainly, prima facie it can be concluded that, the stand taken by Abdul Sajed that, in order to protect and safeguard the property of Municipal Corporation, he filed those complaints and raised the issue in Standing Committee meeting, cannot be said to be bonafide. But, on the contrary, prima facie from transcription of conversation it can be concluded that, filing of complaints to various Government Authorities, was well planned action taken by Abdul Sajed to extract money from complainant. It also appears prima facie that, in the sale deeds in favour of complainant and his brother, it has been clearly mentioned that, the land purchased by them is in green belt. Therefore, in the original sale deeds, no question arose at all to attach the N.A. order and hence, that bogus N.A. order nowhere finds place in crapln190.11 the original sale deeds. It apparently finds place in the copies of sale deeds and as per the transcription of conversation, it appears that, it was inserted by accused Khalil Khan in those copies and it was done so as to extract money from complainant by threatening him that Police will take action against him if complaint is filed at Police Station.

It cannot be ignored that, purchase of land in green belt is not an offence and only its use for N.A. without order of Collector is an offence. It prima facie appears from the documents on record as well as said transcription of conversation that, exactly accused Abdul Sajed and others tried to take benefit of this fact by inserting bogus N.A. order in the copies of sale deeds."

33. The Court has also considered the statement of accused Anwarkhan, who was arrested in connection of this crime and observed in para 51 that his statement also categorically shows the involvement of the present three accused persons in the alleged crapln190.11 crime and therefore, in para 54 the Court has opined that, prima facie, there appears to be involvement of all the three accused in the crime and they are involved in serious offence of demanding ransom, which is serious in nature and ultimately, rejected the bail applications.

34. It appears that initially interim bail was granted to the applicants / accused. However, on finding subsequently sufficient material brought on record by the prosecution, prima facie, indicating involvement of the applicants, the trial Court observed that offences alleged against the applicants -

accused are serious in nature and right of investigation should be properly allowed to be exercised by the police and in the facts and circumstances of the case, custodial interrogation is necessary.

35. In the case of Gurbaksh Singh Sibbia <sup>crapln190.11</sup> (supra), the Hon'ble Supreme Court held, "Superior courts will, undoubtedly, exercise their discretion properly, and not make any observations in the order granting anticipatory bail which will have a tendency to prejudice the fair trial of the accused." (Emphasis supplied).

36. Therefore, keeping in mind the observations of the Hon'ble Supreme Court, I think it appropriate not to comment upon the minute details of the evidence / material collected by the prosecution agency. The trial Court has elaborately dealt with the documents brought on record and also other material by the parties and has recorded elaborate findings and conclusions.

37. I have independently scrutinized / scanned the material brought on record by the applicants, complainant and the investigation papers made available to me by the prosecution <sup>crapln190.11</sup> agency. On careful perusal of the entire material, I am of the opinion that the conclusions reached at by the trial Court are in consonance with the material brought on record. I do not think that the observations of the Sessions Court are contrary to the material brought on record. Since any further observations on the said documents or material brought on record may prejudice the case / trial of the accused, I refrain to comment upon the same.

38. In the case of Gurbaksh Singh Sibbia (supra), the Hon'ble Supreme Court considered the necessity for granting anticipatory bail mainly because some times, influential persons try to implicate their rivals in getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase.

<sup>crapln190.11</sup>

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 <sup>crapln190.11</sup> 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 *crapln190.11* 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 *crapln190.11* 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 *ig* 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.

42. It has come on record that Shaikh Ibrahim has become G.P.A. holder on 9th December, 2010 and *prima facie*, it appears that he cannot have any interest earlier to that in the subject property. However, Abdul Sajed in his application has stated that one G.P.A. holder of Sayyadbin Salem has filed complaint on 30th September, 2010 to the Commissioner of Municipal Corporation and it was mentioned in *crapln190.11* the complaint that by using forged N.A. order, property in green belt possessed by Sayyadbin Salem is sold. Copy of the said communication was marked to the present applicant for raising point in corporation. Therefore, he stepped in, is not the correct position. In fact, G.P.A. is given in favour of the applicant Shaikh Ibrahim by the legal heirs of Sayyadbin Salem Chaus on 9.12.2010, who was original owner of the property. Prior to that, Shaikh Ibrahim had no concern with the said property. It is also argued by the Counsel for the complainant that the said Sayyadbin Salem Chaus had sold his entire property in 1994 itself and from 1994 till the G.P.A. is given, there are no revenue entries in the name of legal heirs of said Sayyadbin Salem Chaus. It has been stated by the legal heirs in the document of G.P.A. given in favour of Shaikh Ibrahim in para no.2, that there is no entry in their name in revenue record.

*crapln190.11*

43. It has come on record that the police have investigated into the matter, one of the co-

accused Mr. Anwar Khan was arrested and he has also stated about the involvement of the present applicants in the alleged crime.

Therefore, the concerned Investigating Officer will have to investigate the matter further and find out definite role played by each of the accused. There are five accused persons.

However, one of them is absconding and is not available for investigation. Therefore, it is also matter of concern and it may happen in case of other co-accused also. As already stated, from the view point of society and public at large, the offences alleged in the complaint are serious in nature and the concerned Investigating Officer is required to be given right to thoroughly investigate in the matter. At the cost of repetition, it has to be stated that the trial Court has cancelled the interim bail only after careful scrutiny of the material brought on record *crapln190.11* including the original sale deeds, transcript and also the statement of Anwar Khan. The said course is permissible as per the judgment of the Hon'ble Supreme Court in case of Siddharam Satlingappa Mhetre (*supra*). The Supreme Court observed, thus:

"117.

ig The view expressed by this Court in all the above referred judgments have to be reviewed and once the anticipatory bail is granted then the protection should ordinarily be available till the end of the trial unless the interim protection by way of the grant of anticipatory bail is curtailed when the anticipatory bail granted by the court is cancelled by the court on finding fresh material or circumstances or on the ground of abuse of the indulgence by the accused. "

44. Therefore, in the light of above observations, and in view of the fact that the prosecution and the complainant have brought on record sufficient fresh material in the nature of original sale deeds, *crapln190.11* transcription of conversation, statement of co-accused Anwar Khan and other material and, therefore, the trial Court, after examining the said material meticulously, cancelled the interim bail.

45. In the case of Gurbaksh Singh Sibbia (*supra*), the Supreme Court has observed that while considering the application for anticipatory bail, individual right and right of police to investigate into the matter is required to be balanced. Therefore, in the present case, it is necessary to see that the police also gets right to investigate the matter and it has to be balanced with the individual right. It has also been argued by the Counsel for the complainant that for the purpose of execution of the sale deed, the stamp which was purchased finds the name of brother of Khalil Khan on front page as stamp vendor. This fact is not denied by Khalil Khan. It has also been argued that said *crapln190.11* Khalil Khan is involved in the process of execution of sale deeds and further for scanning documents as he is given the work by the Government on contract.

46. The applicant Abdul Sajed has admitted that the complainant did come to his house.

In para 45 of his application, it is stated that the complainant personally contacted him and he came to his house only with a view to cheat the applicant. Therefore, the fact that complainant came to the house of the applicant Abdul Sajed has been admitted by him. It is also relevant to note that the application for anticipatory bail has been filed on 14th January, 2011. However, Ground No.XVI is

taken in the said application stating therein that the accused Ibrahim Patel filed complaint u/s 156(3) of Cr.P.C. before the J.M.F.C. seeking directions against the Police Station to register crime against the complainant for not only preparing bogus N.A. order but using crapl<sup>n</sup>190.11 it and giving false information to the police station on which F.I.R. is registered against the applicant. In fact, the said offence is registered on January 24, 2011 as orally stated by the Counsel appearing for the parties. As stated earlier, the application for anticipatory bail has been filed on 14th January, 2011 and the aforesaid ground has been taken in the said application in respect of offence which is registered after filing the application on 24.1.2011. Reasonable inference can be drawn about the influence of the applicant Abdul Sajed.

47. It has come on record in the application of Abdul Sajed that he has no concern with the said land. Though the Counsel appearing for the applicant Abdul Sajed vehemently argued that the applicant was consistently pursuing the Government authorities to protect the government land, at this juncture, it is necessary to mention that there are number of crapl<sup>n</sup>190.11 government / corporation lands which are under encroachment and there is able and efficient government / corporation machinery provided under the relevant law / Rules to remove such encroachments, in accordance with law. The interest of the applicant Abdul Sajed in this particular land does not seem to be bonafide as observed by the Sessions Court. Though, the Counsel for the applicant Abdul Sajed has argued that the said applicant has raised voice about the corruption of Anwar Khan during discussion about the said land in the Standing Committee meeting, upon perusal of the said discussion, it appears that the word used by Abdul Sajed was "Khan" and not "Anwar Khan". Therefore, merely because he has stated something during the discussion before the Sabhapati in the said meeting that would not lead to the conclusion that he has no relation with the co-accused Anwar Khan. In fact, Anwar Khan is working as an employee of the Corporation and in his statement, he has crapl<sup>n</sup>190.11 specifically named all the three applicants and also their overtacts. Therefore, there is statement of Anwar Khan implicating these accused in the alleged crime. It has come on record that Abdul Sajed has started raising voice only from the month of September, 2010 when the another applicant Shaikh Ibrahim had given him copy of the letter, which he had addressed to the Commissioner, Municipal Corporation, Aurangabad raising objection stating therein that Survey No.19/1 situated at Himayatnagar (Himayat Bag) is owned by them and Sandu Dhondiba Dube and others are unauthorizedly selling said plots and, therefore, immediate action may be taken against them. Said land belongs to Corporation and Kham river is flowing through the said land and their land is in green belt, which cannot be developed. This admission of Abdul Sajed, prima facie, strengthens the case of the prosecution that Abdul Sajed and other co-accused namely Shaikh Ibrahim and Khalil crapl<sup>n</sup>190.11 Khan have systematically planned the things in order to extract money from the complainant.

48. The learned Counsel for the applicants have argued that even offence has been registered against the complainant for creating forged N.A. order in respect of said property on 24th January, 2011 and, therefore, now it is clear that the complainant was instrumental in preparing bogus N.A. order.

In this regard, law will take its own course and this Court need not go into that aspect since those are the events subsequent to filing of bail applications. If the complainant or any other person is responsible for any offence, the prosecution machinery will deal with it as per law. Whether the said

land belongs to Government or private person is different matter and if somebody has encroached the said land, the Government machinery will take care of it. This court has not expressing any opinion about the ownership of the said land.

49. In the present case, on assessing the entire material on record, prima facie, it does appear that the applicants have taken keen interest and systematically planned the events so as to reach their goal.

In case of State Rep. by the C.B.I. vs. Anil Sharma, reported in (1997) 7 SCC 187, the Apex Court held, thus:

"6. .... Custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers conduct themselves in task of disinterring offences would not conduct themselves as offenders."

50. Therefore, in the light of above, in my opinion, the applicants do not deserve to be released on anticipatory bail. Hence, all the three applications seeking anticipatory bail are rejected.

At this stage the learned Counsel for the applicants prayed for extension of interim protection by further three weeks. However, interim protection is extended till 8th February, 2011. It is made clear that no further extension will be granted.

Needless to mention that, the observations made herein before, are only for the purpose of deciding the present applications seeking anticipatory bail.

ig [ S.S. SHINDE ]  
JUDGE.

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kadam/\*

