

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 30 OF 2015

1 Ambadas Vyankayya Bingi.	
2 Shriniwas Vyankayya Bingi.	... Applicants.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Subhash V. Gutte, advocate for Applicants.

Mr. D.P. Adsule, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 15, 2015

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 393 of 2014 registered at Sadar Bazar Police Station for offence punishable under Section 420, 467, 468, 471 read with Section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 15/12/2014 Anjammabai Chilka lodged a report at the police station alleging therein that the present applicants happens to be her siblings. The applicants are younger brothers of the complainant. Her father had died intestate. Her father was the owner of the said Survey No. 10432, Final Plot No. 23 admeasuring 2475 sq.ft. There is no written partition or notional partition between siblings. On 1/11/2014 the applicants had asked her to come alongwith her election card. She had been to the house of her brothers. Thereafter, they had informed her that they have to apply for Adhar card and therefore, they had taken her to the office of Zilla Parishad. She was made to sign and put her thumb mark on written application. She presumed that the application is being made for Adhar card. Her photograph was taken before the computer. Her brothers had returned her election identity card and sent her home. She had informed her son about the same. He suspected foul play and therefore, they made further enquiry. In the said enquiry, she realised that the applicants had fraudulently

obtained her waiver of rights in respect of ancestral property. Taking undue advantage of illiteracy, she had been cheated. She had filed an application before the land record office. On 17/11/2014 in the course of investigation, she saw that several documents were prepared and hence, she was constrained to approach the police station.

4 It is apparent on the face of the record that the present applicants who happen to be the brothers of the complainant had in fact, cheated her by executing registered waiver of rights document in their favour.

5 The learned Counsel for the applicant submits that the case rests upon documentary evidence and therefore, custodial interrogation would not be necessary.

6 In fact, it is the statutory right of a woman to claim equality in her ancestral property as per Section 6A of the Civil Procedure Code.

The applicants have no doubt cheated the complainant by inducing her to sign on written document which was purportedly a document giving waiver of right in the ancestral property.

7 The learned Counsel for the applicant has placed reliance upon the Judgment and Order passed by Gujarat High Court in the case of **Bharatbhai Jayantilal Shah and 3 others v/s. State of Gujarat**. The facts of the said case are not applicable to the facts of the present case, as in the said case on **Bharatbhai Shah(Supra)**, pre-arrest bail was granted since there was a dispute between the partnership firm. Relations in the present case is that of brother and sister. It is a matter where the complainant has been forced to waive her rights in favour of the applicants. Hence, the citation would not be applicable.

8 In view of the above observations, the application stands rejected.

(SMT. SADHANA S. JADHAV,J)