

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1583 OF 2014

1. Yasin Suleman Umatiya
2. Usman Vazir Mukhi
3. Rashid Gulam Rasool Maredia
4. Mohammed Isaq Miyaji JagralaApplicants

V/s.

The State of MaharashtraRespondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 32 OF 2015

Yasin Suleman UmatiyaApplicant

V/s

The State of MaharashtraRespondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 35 OF 2015

1. Usman Vazir MukhiApplicants
2. Mohammed Isaw Miyaji Jagrala

V/s

The State of MaharashtraRespondent

Mr. Yug Mohit Choudhary a/w Mr. Ajay Basutkar Advocate for Applicants
Mr. Girish Kulkarni for Intervener
Ms. P. P. Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 16th JUNE 2015

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in crime no. 619 of 2012 registered at M.I.D.C. Police Station, Andheri for offence punishable under sections 420, 465, 467, 468, 471 r/w 34 and section 120 (B) of Indian Penal Code.

2) It is the case of prosecution that on 03/10/2012, one Glenn Joseph Ebnet lodged a report at the police station alleging therein that husband of her paternal aunt Mr. Lilither Coelho had transferred survey no. 167(p) admeasuring 5026 square meters in favour of his father. That in the year 2006-2007, he had received three caveats through an Advocate stating therein that in the eventuality that they have any right over the said property, they should contact Sana Enterprises. Complainant had approached all the authorities such Municipal Corporation, City Survey Office, Collector Office etc. Upon enquiry, he learnt that a proposal has been filed for developing the said land. Upon further enquiry, it was revealed that partners of Sana Enterprises had filed a General Power of Attorney on 21/05/1992 wherein they were entrusted with the rights over the said property. According to the

complainant, Mr. Coelho had died in the year 1988 and the General Power of Attorney was purportedly executed in the year 1992 i.e. practically after more than 4 years after the demise of Mr. Coelho. According to the complainant, General Power of Attorney was forged and fabricated by partners of Sana Enterprises. Learned counsel for the applicant has submitted that the said General Power of Attorney was submitted by architect Shri. Shekhar Arolkar who was engaged by Sana Enterprises. It is further submitted that on 01/02/2013, memorandum of understanding was executed between complainant and applicant for a part of the land of same survey number. On 28/09/2012, complainant had filed a private complaint against all the directors of Sana Enterprises. Memorandum of understanding was executed after filing of private complaint and F.I.R. On 05/02/2013, complainant had withdrawn the private complaint. On 06/02/2013, complainant had sent the communication to the police in the form of an application through the lawyer stating therein that he has no grievance against present applicants. On 28/02/2013, police officers, pursuant to the application sent through lawyer had recorded the statement of complainant under section 161 of Code of Criminal Procedure, 1973 wherein it was reported that complainant has

signed memorandum of understanding with present applicants and hence, he has no grievance against them.

3) It is pertinent to note that on 09/04/2013, a registered conveyance deed was executed by the complainant in favour of present applicants. Pursuant to the execution of the said conveyance deed, on 12/06/2013, complainant had also made a written communication to the Municipal Corporation thereby contending that he has no objection for the applicants to develop the said land. On 25/01/2014, complainant had sent legal notice to the present applicants stating therein that they are liable to pay Rs. 12,50,000/- to the complainant as per the recitals in the conveyance deed. Applicants had replied the said communication contending therein that they had no liability since they had complied with all the conditions incorporated in the conveyance deed. It is further pertinent to note that on 08/03/2014, complainant had further issued a legal notice to the applicants stating therein that amount of liability is 7,50,000/- and not 12,50,000/-.

4) Learned counsel for the applicants submits that it was only thereafter that applicants had apprehended arrest at the hands of police since they were coercing the applicants to fulfill the demand made by complainant in the letter

dated 25/01/2014 and hence, applicants apprehended arrest.

5) Learned counsel appearing for intervener submits that there is possibility that it was only directors of Sana Enterprises who had forged the General Power of Attorney and entrusted it with the architect and therefore, it would be necessary to trace the original General Power of Attorney.

6) Upon perusal of the papers of investigation, it is clear that although purported forged document is of the year 1992, F.I.R. was lodged in the year 2012 and despite the same, complainant had entered into memorandum of understanding with present applicants on 01/02/2013.

7) Learned counsel for the applicants submits that this would clearly indicate that complainant had waived the act alleged in the F.I.R. and moreover, complainant had specifically stated that applicants herein are the victims of fraudulent act of some other persons and therefore, at this belated stage, custodial interrogation of the applicants would be unwarranted and unjustified.

8) This Court has observed that there is no proceeding filed by complainant asking for cancellation or invalidation of the said General Power of Attorney. At present, there is no investigation in that direction. Although,

the architect has been shown as an accused, till today, he is neither protected by way of pre-arrest bail nor there appears to be any effort to arrest the architect who had furnished the said document before Municipal Corporation. Statements of the complainant under section 161 of Code of Criminal Procedure, 1973 needs to be taken into consideration at this stage, since he had asserted that applicants are innocent and have been victimized.

9) Learned counsel for the complainant submits that there are other factors which weighed with the complainant at that stage and hence, the same need not be taken into consideration.

10) Taking into consideration the facts of the case and the submissions advanced across the bar, it can be said that applicants had made out a case for grant of pre-arrest bail. It is made clear that observations made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

(i) Applications are allowed.

(ii) In the event of arrest, applicants be enlarged on bail on furnishing P. R. bond in the sum of Rs. 50,000/- each and one or two

solvent sureties in the like amount.

(iii) Applicants shall report to concerned police station on four consecutive Mondays commencing from 22/06/2015 and co-operate with the investigation to the best of their capacity.

(iv) Applications stand disposed of.

(SMT. SADHANA S. JADHAV, J.)