

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 34 OF 2015

1) Tarachand Narsingh JainApplicants
2) Nirmal Tarachand Jain
3) Atul Tarachand Jain

V/s.

The State of MaharashtraRespondent

Mr. Nitin Sejpal Advocate for Applicants
Mr. S. S. Pednekar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : FEBRUARY 3, 2015

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 46 of 2014 registered at Murud Police Station for offence punishable under sections 447, 454, 384, 427, 504, 506 r/w 34 of Indian Penal Code.

2) It is the case of prosecution that one Narayan Pake lodged a report at the police station alleging therein that he is the owner of an agricultural land situated at survey no. 6A, Hissa No. (4) 2. The said land is converted to non agricultural purposes. Since, he could not pay attention to the cultivation of

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the said land, he had not visited the said land. That his friend i.e. present applicant had cheated him and transferred the said land in the name of his wife in the year 2006. That he had made complaint to the Revenue Authorities. That house no. 305 constructed by him is on the said land. He had also informed the Revenue Authorities not to transfer the said house in the name of present applicant. That he had requested his cousin to look after the said house. That the complainant is a contractor by profession and he had kept building material in the same house. According to him on 12/10/2014 at about 10.00 am, his cousin had noticed that present applicant had illegally entered into the said house no. 305. He had seen that they were causing damage to the said house. Upon inquiry, applicant had allegedly informed that he shall not interfere with his business and had threatened him of dire consequences. There was a quarrel over the said issue. According to him, there was theft in the said house of his construction material and other documents. Report was lodged on 29/10/2014. On the basis of the said report, offence was registered against present applicants.

3) Learned counsel for the applicants has placed on record an agreement

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to sale dated 08/12/2003, wherein title of the said land along with possession was transferred in the name of Nirmala Tarachand Jain by the complainant. In the year 2010, complainant has filed Special Civil Suit No. 45 of 2010 before Civil Judge Senior Division at Alibag seeking cancellation of the sale deed, executed in favour of present applicants. The said suit was transferred to Civil Judge Junior Division at Murud and is renumbered as 37 of 2012.

4) It is pertinent to note that Grampanchayat Ekdara has, by a communication dated 05/08/2013, informed the complainant that he had misled the Grampanchayat Authorities by showing that house no. 305 stands in his name, however, 7/12 extracts would show that it stands in the name of Smt. Nirmala Tarachand Jain. It is pertinent to note that on 18/07/2013, complainant had filed a complaint before P.I. of Murud Police Station, making similar allegations against present applicants. That on 07/11/2014, administrator of Grampanchayat Ekdara has informed the complainant that he has fabricated the revenue records showing that the house stands in his name. On 09/08/2013, statement of complainant was recorded in the previous proceedings, wherein, he has disclosed to the police that he had lodged earlier

report with the intention to initiate criminal prosecution against present applicants. However, he was informed by the police that no cognizable offence is made out and that the dispute is of civil in nature and therefore, he has subsequently filed present F.I.R. alleging theft against present applicants.

5) It prima facie appears that the dispute between the parties is civil in nature. Revenue Authorities have categorically alleged forgery and fabrication against complainant. Taking into consideration the papers of investigation and the submissions advanced across the bar, this Court is of the opinion that the applicants have made out prima facie case of 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) Application is allowed.
 - (ii) In the event of arrest, applicants be enlarged on bail on furnishing P. R. bond in the sum of Rs. 15,000/- and one or two sureties in the like amount.
 - (iii) Applicants shall report to the police station as and when called.
- Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)