

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 158 OF 2015

Mohammed Hanif Shadam Khan. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Mubin Solkar i/b. Ms. Tahera Abdul R. Qureshi, advocate for Applicant.

Mr. R.J. Rizvi, advocate for intervenor.

Ms. Rutuja Ambekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : JUNE 22, 2015

P.C.:

1 Heard the learned Counsel for the applicant, learned Counsel for the intervenor and learned APP for State. Perused 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. 207 of 2014 registered at Dongari Police Station on

1/12/2014 for offence punishable under Section 465, 467, 468, 471, 420 read with Section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 1/12/2014 the complainant Mohammed Ibrahim who happens to be the younger brother of the applicant has lodged a report at the police station alleging therein that their father expired on 8th March, 1970. Their mother namely Rabiya expired on 22/1/2001. They are in all 10 siblings. According to the complainant, the family owns two bakeries. One is Amir Khan Bakery and the other one is M.A. Hussaini Bakery. Both the bakeries were owned by their father. After demise of their father, bakeries were transferred in the name of their mother Rabiya Shadam Khan. It is alleged that the present applicant had allegedly obtained consent and no objection certificate from all the brothers and sisters for transferring the bakeries in the name of the present applicant. The said documents bear signatures of all the siblings. The complainant had informed his sister Jamila about the same. They had enquired with the present applicant. It is alleged that the present

applicant had informed them that five siblings had taken over Amir Khan bakery. It appears that M.A. Hussaini Bakery was in possession of the complainant. According to the complainant, he had approached the owner of the Amir Khan bakery and at that time, he learnt from the owner that the present applicant had given an affidavit of consent and no objection, indemnity bond and tenancy agreement for transferring the said bakery in his name. According to the complainant, he had never signed the said affidavit of consent and no objection or indemnity bond tenancy agreement. It is therefore alleged that the applicant has committed forgery of the said documents.

4 The learned Counsel for the applicant has vehemently submitted that in fact, siblings have formed two rival groups, five on each side. According to him, the complainant had signed those documents in the year 2008 and as of now, denied to have signed the same for the reasons best known to the complainant. The learned Counsel for the complainant had on earlier occasion submitted that

the complainant had always signed the documents in Urdu and had never signed any document in English. The applicant had obtained several documents under the Right to Information Act. They being copy of marriage certificate, copy of Nikahnama, copy of memorandum of marriage. All the said documents have been signed by the complainant in English. The learned Counsel for the complainant has admitted the said documents.

5 Upon instructions from the Investigating Officer who is present in the court, the learned APP also submits that the said documents are genuine documents and have been signed by the complainant in English. The learned APP submits that the complainant has two pan cards. One which is issued in the year 2006 bears the signature in Urdu, whereas one issued in the year 2009 bears signature of the complainant in English.

6 It is vehemently submitted by the learned Counsel for the complainant that in respect of the said pan card which is signed in

English, the present applicant has filed application and forged the said documents as the pan card was received at the address of the applicant and not at the address of the complainant.

7 In the order dated 9th March, 2015, this Court (Coram : Revati Mohite Dere, J) has recorded the statement of the learned APP that pursuant to the earlier directions, the applicant and all his brothers and sisters have given their specimen signatures to the concerned Investigating Officer. However, the Investigating Officer who is present in the court has specifically stated before the Court that the complainant was not cooperating with the investigation and has refused to give specimen signature in English. It was pursuant to the indulgence of this Court that the complainant had given the specimen signature in English. However, this conduct of the complainant needs to be taken into consideration.

8 Be that as it may, it prima facie appears that there is dispute over ancestral property between the brothers and sisters. It is a matter

of record that the purported forged document was allegedly prepared in the year 2008. However, FIR is lodged only in 2014. On the point of delay in lodging FIR, learned Counsel for the complainant submits that only two months prior to approaching the police the complainant had learnt that the consent and no objection certificate and other documents were forged by the applicant. It is also submitted that he had approached the police, but to no avail.

9 It is true that the police had not taken any action because prima facie, it may appear that it was a dispute between brothers and sisters. It appears that there is some civil suit filed by other brother against Jamila i.e. sister of the complainant and the applicant, who is now in camp of the complainant for eviction of the flat which is in her possession.

10 It prima facie appears that there is a dispute between brothers and sisters who have formed two rival groups to claim their possession over the bakery which was being run by their father. The

applicant herein is eldest brother and is running Amir Khan Bakery and has protected the interest of the other siblings as contended by the learned Counsel for the applicant. It can be held that the applicant has made out a case for pre-arrest bail.

11 However, the above observations are prima facie in nature. The same shall not be considered while deciding application for discharge or quashing of FIR or at the time of trial. The trial Court shall decide the matter on its own merits uninfluenced by the abovesaid observations.

12 Hence, following order is passed.

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or two sureties in the like amount.

(iii) The applicant shall report to the concerned police station as and when called and cooperate with the investigating agency to the best of his capacity.

13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)