IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 333 OF 2015

Mohd. Maroof Son of Abdul Sattar Khan Applicant
vs.
1) The State of Maharashtra)
2) Mohd. Farooque S/o Abdul Sattar) Respondents

Ms. Anjali Awasthi,Advocate,for the applicant.
Mr. Narendra Dubey a/w Bhagyashri Gawas for the intervener.
Ms. P.P.Shinde, APP, for the State.
Mr. Santosh Rasam, PSI, Vakola Police Staton, Mumbai present.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 30th July, 2015.

P.C.

Heard. This is an application under Section 438 of Cr.P.C. The applicant herein is apprehending his arrest in Crime No.320 of 2014 registered at Vakola Police Station, Mumbai.

2. It is the case of the prosecution that on 30.1.2014, the mother of the applicant and two brothers of the applicant had made a communication to the Senior Manager, Reliance Energy Ltd. contending therein that the present applicant has fraudulently transferred the electric

meters on the basis of forged and fabricated document. The Reliance Energy was requested to investigate into the same and make enquiry about it. Accordingly, Reliance Energy had enquired into the same.

3. That on 17.4.2014, the brother of the applicant lodged a report at Vakola Police Station alleging therein that on 11.5.2007, his father had expired. Thereafter, it was decided that all the legal heirs of Abdul Sattar Khan shall claim equal rights in the property. In January 2014, he had been to Bharat Communication Shop and he had learnt that the electricity meter which was installed in the name of his father was now changed in the name of his brother i.e. the present applicant. He specifically contends that the said transfer was without the knowledge of the brothers or the mother. He filed an applicat9on to Reliance Energy under the Right to Information Act and at that time, he learnt that without obtaining his permission or the permission of his brothers, the present applicant had filed a false affidavit which was a notarized document before Reliance Energy Ltd. That the applicant had affixed the photographs of two persons showing them as his brothers and that they had given no objection for transferring the electricity meter. Thereafter, the electricity bills were issued in the name of the applicant. It is also alleged that the present applicant had shown that he is

the sole owner of the said shop and was attempting to deprive the complainant of his rights in the said shop. On the basis of the said report, Crime No..... was registered.

4. In the course of investigation, the Investigating Officer had made an enquiry that Reliance Energy and found that the applicant had made an application to Reliance Energy on 9.3.2012. He had affixed his photographs on the application form and had prayed for transferring the electricity meter in his name. Along with the application, the applicant had also filed a notarized document on a Non-judicial stamp which reads as follows :-

> *"That we along with our brother Mohammed Maroof are the legal heirs and legal representatives of deceased Abdul Sattar who was the owner of the above said premises and all relevant documents including electric meter No._____ Account No.______ installed therein stands in his name. He died intestate on 11.5.2007. We are the only surviving legal heirs. We say that our said brother Mohammed Maroof Abdul Sattar is occupying and carrying on said business in the said premises and we hereby give our irrevocable consent and no objection for transfer of the said electric meter with its deposit amount from the name of our deceased father to the name of our said brother*

(Mohammed Maroof) and for issue of electric bill etc. in his name hereafter by concerned Reliance Energy Authority."

5. It is pertinent to note that there were two photographs affixed on the said document. Admittedly, the said photographs are not of the brothers of the applicant. The said document is also signed by the said persons purportedly to be the brothers of the applicant. The meters were transferred in the name f the present applicant. The Investigating Officer has recorded the statement of the Notary, before whom the said document was nota4rized. The Notary has disclosed that the said document is notarized at his office. He has specifically disclosed that on the day of notarization of the said document, the applicant had been to his office. He had already affixed the photographs of two persons. He had informed the Notary that they happen to be his brothers and they had gone for tea and tht they would return and sign the said document. However, thereafter, the said persons had never returned to the office of the Notary. He has admitted that he had notarized the said document in good faith by reposing faith in the present applicant.

6. The learned counsel for the applicant has placed on record the electricity bill which was issued in the name of the present applicant dated

15.1.2014 which clearly shows that on the basis of a notarized affidavit purportedly signed by the brothers of the applicant, the electricity meter was transferred in the name of the present applicant.

7. The learned counsel further submits that there was a deed of settlement within the family which was purportedly executed on 23.4.2012, wherein the property which is described in Schedule-I was to be entrusted as the exclusive property f the present applicant subject to fulfillment of oher terms and conditions incorporated in the deed of family settlement by the respective parties. It was agreed that the present applicant would pay the cost of Rs.45,66,667/-. The learned counsel further submits that pursuant to the deed of settlement, the applicant herein has paid a major part of the amount except Rs.13,22,223/-. She has placed reliance upon the communication between the parties wherein the complainant had issued a notice to the applicant to pay the remaining amount. According to the learned counsel, by filing an application seeking change in the electricity meter record would not make any difference since the applicant was already entrusted with the said property. According to the learned counsel for the applicant, Sections 467, 468, 471 and 420 of IPC would not be applicable in the present case since the applicant had neither forged nor fabricated any

document. That the applicant had no reason to do so and therefore the applicant is also not liable for the offence under Section 420 of IPC.

8. Section 192 of Indian Penal Code reads thus :-

> ***“192. Fabricating false evidence*** *Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said “to fabricate false evidence”.*

9. The learned counsel for the applicant has submitted that Section 467 of IPC contemplates thus :-

> “**467. Forgery of valuable security, will, etc.** Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property , or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

According to the learned counsel, assuming for the sake of argument ts that the applicant had got notarized the affidavit of his brothers by annexing false photographs, it cannot be said that it purports to be a valuable security or a will or it does not give any authority to any person to make or transfer any valuable security, etc. Similarly, it is submitted that Section 468 of the Indian Penal Code contemplates that whoever commits forgery, intending that the document shall be used or the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years and fine. According to the learned counsel, since the document is not a valuable security or a will, it cannot be said that the said document was forged and moreover, there is no element of cheating since the applicant has received the property by way of a Family Settlement Deed. Section 471 of IPC read thus :-

> ***"471. Using as genuine a forged document or electronic record.*** *Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record."*

In the present case, the very fact that the applicant has affixed the photographs of two strangers to make the Notary believe that they happen to be his brothers and would sign the document, is enough evidence to show that the said document was forged and fabricated for the purpose of transferring the electricity meter in the name of the present applicant.

10. The learned counsel for the intervener submits that it is not simply the issue of transferring of the electricity meter, but a electricity bill is relied upon as a valid proof for establishing the address, domicile and the identity fo the status of the person in whose name the electricity bill stands and therefore, according to the learned counsel for the intervener, an attempt was being made to transfer the shop in the name of the present applicant and the starting point was the change in the name of electricity meter. The recitals of the notarized document would also show that it was specifically contended in the said notarized document that "the applicant is occupying and carrying business in the said premises and we hereby irrevocably consent to".

11. It is pertinent to note that today in the course of arguments, the learned counsel for the applicant submits that even as on today, the electricity bill is issued in the name of father of the applicant and therefore it cannot be said that filing of the notarized affidavit has caused any damage or injury to the complainant and the mother of the applicant. This is a blatant statement and upon perusal of the records of investigation, it is clear that initially, the meter was transferred in the name of the present applicant. After the mother of the applicant lodged a report, an application was made to Reliance Energy showing that the meter was transferred in the name of the applicant on the basis of a forged and fabricated document and therefore the meter was re-transferred in the name of father of the applicant. The letter dated 20.3.2014 issued to the present applicant would show that the company has re-transferred the energy connection of Mohammed Maroof Abdul Sattar to the earlier registered consumer Abdul Sattar. The applicant cannot take advantage of the re-transfer made by Reliance Energy.

12. It is not only the net result which has to be seen but the means adopted by the applicant by forging and fabricating the documents had made an attempt to deprive his brothers of the property is serious in nature.

13. The learned counsel at the cost of reiteration submits that there is no damage or injury to the applicant nor loss to the complainant and, therefore, according to her, Sections 465, 467 and consequently offence under Section 420 of IPC is not made out and hence the application deserves to be granted pre-arrest bail.

14. The learned counsel reiterates that by changing the name in the electricity meter no damage or injury is caused. The gist of the offence is the intention to cause damage or injury. It is not material as to whether damage, injury or fraud is actually committed or not. An actual intention to convert an illegal or doubtful claim into an opportunity legal one is dishonest and amounts to forgery.

15. The expression “intent to defraud” occurring in Section 463 of IPC implies conduct coupled with intention to deceive and thereby cause injury where there is an intention to deceive and by means of the deceit to obtain an advantage there is fraud and if a document is fabricated with such intent, it is forgery.

16. In the present case also, according to the learned counsel, the applicant had a right claim over the property by virtue of Family Settlement Deed hence it was not necessary for the applicant to take

recourse to such fraudulent exercise. The Court cannot be oblivious of the fact that the applicant has indulged into committing an act for staking claim fraudulently, and there is strong evidence to that effect.

17. The learned counsel for the applicant has placed reliance upon a Judgment of the Hon'ble Apex Court in the case of **Sumit Mehta vs. State (NCT of Delhi) (2013) 15 SCC 570.** The learned counsel placed implicity reliance upon para 13 of the said Judgment which reads thus :-

> *"13. We also clarify that while granting anticipatory bail, the courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the courts are duty-bound to impose appropriate conditions as provided under the sub-section (2) of Second 438 of the Code."*

According to the learned counsel, the applicant deserves pre-arrest bail since he would be available for interrogation as and when required and that he would be available for the purpose of trial.

18. In cases of forgery and fabrication of documents, a duty casts

upon the Court to see that reliefs are not granted on technical grounds but to dissuade the accused from indulging into similar acts and that it also has to act as a deterrent in the present day situation as there is no fear of law in the minds of the people. The only reason for there being no fear of law is that on technical grounds the accused is enlarged on bail. The accused is assured that he would not be taken into custody and thereby there is no fear of being exposed to social obloquy. Hence, this Court is not inclined to grant of pre-arrest bail. The conduct of the applicant speak for itself.

19. The application being sans merits, stands rejected.

20. An oral prayer is made for staying the present order. The oral prayer is rejected. The applicant was granted interim protection by this Court (Coram: Revati Mohite Dere, J.) vide order dated 5.3.2011 mainly on the ground that the applicant was granted interim protection by the Sessions Court. His application for anticipatory bail is rejected. However, today after perusing the papers of investigation, this Court is not inclined to grant anticipatory bail or stay the order rejecting anticipatory bail.

(SMT.SADHANA S.JADHAV, J.)