

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1589 OF 2015

Subhash Tipanna Nelge ..Applicant

v/s.

The State of Maharashtra. ..Respondents

Mr. Ashutosh Kumbhakoni, Sr. Advocate i/b. Manoj Mohite for the Applicant

Mrs. G.P.Mulekar, APP for the Respondent-State.

Ms. Manjiri Parasnis, for the intervenor.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : DECEMBER 21, 2015.**

P.C.

1. This is an application for anticipatory bail filed by the applicant apprehending his arrest in Crime No.156 of 2015 registered with Bhosari Police Station for offences punishable under Section 341, 420, 447 of the Indian Penal Code. The allegations against the applicant in brief are that based on a forged and fabricated power of attorney dated 26.7.1994 allegedly executed in his favour by the owners of the property, he executed a deed of sale dated 5.2.1996, in

respect of plot no. 6 admesasuring 5,015 sq. ft. from the property surveyed under survey no. 36 Hissa No.2, Balewadi, Pune, in favour of Doreen D'Souza who in turn has sold it to the co-accused. Pursuant to the FIR lodged by Sanjay Shankar Kamble, the aforesaid crime came to be registered.

2. The Learned Sr.Counsel Shri Kumbhakoni has submitted that the original owners of the property had executed the Power of Attorney in favour of the applicant in the year 1994. Initially the Power of Attorney was not attested, however subsequently, in view of the amended provisions the said Power of Attorney was authenticated. He has submitted that at the relevant time, the registration of the Power of Attorney was not mandatory and that the provisions of registration were amended only in the year 2005, subsequent to the execution of the sale deed.

3. The learned Sr. Counsel Mr. Kumbhakoni has further submitted that there appears to be dispute between the complainant and the subsequent purchasers of the plot no.6 as regards the identification of

the plots. The learned Sr. Counsel has submitted that the complainant herein has already filed a civil suit against the subsequent purchasers of the plot no. 6 and that the said dispute is pending before the civil court. It is submitted that the applicant has tried to convert the civil dispute into criminal dispute only with an intention of harassing the applicant and the other co-accused. He has submitted that the nature of the accusation do not warrant custodial interrogation.

4. Ms.Parasnis, the learned Counsel for the intervenor has submitted that the applicant, on the basis of the forged and fabricated power of attorney had executed sale deed dated 05.02.1996 and sold the property which was already sold by the original owner by sale deed dated 26.07.1994.

5. Mrs. Mulekar, the learned APP has submitted that the owners have disputed having executed any power of attorney in favour of the applicant. She has further submitted that the advocate on record, who had allegedly identified the owner of the property before the

Sub Registrar had stated that he had merely signed the register without knowing or identifying the owners.

6. I have perused the records and considered the submissions advanced by the learned counsel for the applicant, the learned counsel for the intervenor and the learned APP for the State.

7. The records prima facie reveal that the property bearing Survey No. 36 Hissa No.2 was owned by Bhaskar Balwadkar and others. The owners of the said property had executed a power of attorney no.67 of 1994 in favour of the applicant. The said power of attorney was signed by the owners of the property and was subsequently authenticated by the Sub Registrar. The owners of the property who were duly identified by the advocate and they had signed the register maintained by the Sub Registrar. The requisite fee for authentication was also paid.

8. A perusal of the Power of Attorney prima further reveals that the owners of the property had authorized the applicant herein to

enter into an agreement for sale as well as to sell the said property. The records reveal that acting upon the said power of attorney, the applicant by deed of sale dated 11.9.2012 sold plot no.6 of the said property to Doreen Anthony D'Souza. Said Doreen D'Souza sold the said plot to one Mrs. Puja Rajiv Gandhi and Mrs. Deepali Prasanna Sawant, who in turn by sale deed dated 25.3.2013 sold the property to Mr. Vinod Gadekar, Sameer Karpe and M/s.R.Z. Malpanai.

9. The records further reveal that by sale deed dated 26.7.1994 the owners of the property had also sold plot no. 5 and 6A of the said property in favour of Dr. Sudhir Dixit & ors., who in turn by deed of sale dated 3.2.2014 have sold the said plot to the complainant and others.

10. It is pertinent to note that neither Doreen D'Souza nor the co-accused had raised any dispute regarding the identity of the property nor challenged the authority of the applicant to execute the sale deed dated 5.2.1996. The dispute in respect of the power of attorney and the sale deed executed in the year 1994 and 1996 respectively has

been raised by the complainant only in the year 2015. Prima facie the dispute appears to be in respect of the identity of the plot no.6 sold by the applicant and the plot purchased by Vinod Gadekar and others. The purchasers Vinod Gadekar and others have already filed a civil suit against the complainant Sanjay Kamble and others. The said suit is pending adjudication.

11. The records do not prima facie disclose essential ingredients of cheating by the FIR appears to be an off shoot of the civil dispute. The above facts and circumstances, therefore do not justify custodial interrogation. The applicant is a permanent resident of Pune. There is no possibility of the applicant absconding. Furthermore, the complainant has no criminal antecedents.

12. Considering the above facts and circumstances, the applicant is ordered to be released on bail on the following terms and conditions.

i) In the event of arrest of the applicant in Crime No.Crime No.156 of 2015 registered with Bhosari Police Station, the applicant

be released on bail on the applicant furnishing bail bond of Rs.25000/- (Rupees Twentyfive Thousand Only) with one solvent surety in the like amount to the satisfaction of the learned JMFC, Pimpri, Pune.

- ii) The applicant shall report to the Investigating Officer for four days between 10 a.m. to 2.p.m. from the date of receipt of this order.
- iii) The applicant shall not leave Pune city without the prior permission of the JMFC, Pune.

(ANUJA PRABHUDESSAI, J.)