IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPEALLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1545 OF 2014

Siyab Akhlak Patel .. Applicant
Versus
State of Maharashtra .. Respondent

WITH
CRIMINAL APPLICATION NO. 845 OF 2014
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1545 OF 2014

Maki Homi Chibber .. Applicant/Intervener

In the matter of :
Siyab Akhlak Patel .. Applicant
Versus
State of Maharashtra .. Respondent

Mr. A.P. Mundargi, Sr. Counsel i/b Mr. Satyajeet H. Joshi for the Applicant.
Mr. S.V. Marwadi i/b Mr. Kartik Garg, for the Intervener.
Ms. A.T. Jhaveri, A.P.P. for the State.
Mr. A.A. Jagtap, A.P.I. Palghar Police Station.

CORAM :- SMT. SADHANA S. JADHAV, J.
DATED :- 15th JULY 2015.

P.C. :-

1 This is an application under Section 438 of Cr.P.C. Applicant herein is apprehending his arrested in Crime No.135 of 2014 registered at Palghar Police Station, for the offences punishable under Sections 465, 467, 468, 471, 420 r/w. 34 of I.P.C.

2 It is the case of the prosecution that on 13.11.2014, the complainant herein lodged a report at the Police Station alleging therein that she is owner of the ancestral property situated at Mauje Saya, Taluka Palghar. That she has inherited the said property from her mother Nargis Modi. According to her, her mother had executed a specific power of attorney in favour of one Majaj Dolare for managing property. It is alleged that by registered sale deed dated 28.04.1997, Majaj Dolare on behalf of her mother Nargis Modi, had sold Survey No.4 in favour of the present applicant. It is seen from the records that the applicant was put into possession of Survey No.4 soon after the sale deed was executed. It is further alleged that the present applicant had sold the said land in favour of one Dilkhush Doshi. On the basis of the registered sale deed mutation entries were taken as well the names were entered in the ownership column in the 7/12 extract and on the basis of the said documents the applicant alleged to have sold the properties in favour of Dilkhukh Doshi.

3 It is further alleged that the complainant had also executed specific power of attorney in favour of Majaj Dolare. That

he had sold Survey No.5 to one Siddhique. The complainant had learnt that she and her mother have been cheated. The specific power of attorney was cancelled on 27.07.2004. The property at Survey No.5 was sold on 17.09.2004 i.e. after cancellation of specific power of attorney. The complainant herein had filed private complaint on the basis of which Crime No.210 of 2007 was registered against Majaj Dolare and Siddhique. Both accused were arrested in Crime No.5 of 2007 registered for the offences punishable under Sections 420 406, etc. of I.P.C. In the course of investigation in Crime No.5 of 2007, the statements of the witnesses was recorded. The statement of present complainant was also recorded and she had specifically stated that in the year 2004 itself, she had learnt that in the year 1997, the property is sold in favour of the present applicant on the basis of the forged power of attorney executed in favour of Majaj Dolare by her mother. However, no criminal prosecution was lodged against the present applicant at that time.

4 It appears from the papers of investigation in Crime No.5 of 2007 that in the year 2004, the owner of Silver Miles Hotel, who

was interested in the said property had approached the present complainant. At that time she had learnt that the said land stands in the name of Siyab Patel. However, no action was initiated nor any proceedings were initiated against the present applicant and finally on 13.11.2014 the complainant has lodged the present report.

5 Learned Senior Counsel appeared for the complainant submits that despite the fact that the complainant had knowledge about the execution of sale deed in respect of Survey No.4 in favour of the present applicant in the year 2004 itself, she has not initiated any proceedings either civil or criminal against present applicant. There is no plausible explanation for inordinate delay in lodging FIR. Beside it is also alleged that, in fact, the applicant had no knowledge that Shri Dolare had either forged the specific power of attorney or had misused the specific power of attorney action in his favour and, therefore, the applicant is only a purchaser and cannot be held liable for any offence punishable under Section 420 of I.P.C. Applicant has not committed any breach of trust and, therefore, he deserves to be granted pre-arrest bail. The learned counsel for complainant submits

that in fact the present applicant happens to be a cousin of Shri Dolare and that they had conspired with each other to cheat the complainant as well as her mother and, therefore, it can be safely inferred that they had shared the common intention and have put the complainant to great loss. It is further submitted that most of the relevant documents are missing.

6 Learned A.P.P. upon instructions from the Investigating Officer submits that it is true that the original specific power of attorney on the basis of which the sale deed was executed or mutation entries were taken, is missing from the office of the Tahsildar, that the concerned officers have retired on superannuation. It is in this premise, that it cannot be said that custodial interrogation of the applicant would be necessary to recover either the original specific power of attorney or the registered sale deed. It is a pitiful situation that the documents are missing from the office of Tahsildar and other Government offices and no action is taken at the relevant time. This causes great loss to the public at large. It is further submitted that Shri Dolare was arrested. He was produced before the

Court of Judicial Magistrate, First Class, Palghar. It is submitted that he was remanded to police custody however, he had immediately complained of some ailment due to which he was hospitalized and on the grounds of illness he was enlarged on bail by the Court of Judicial Magistrate, First Class, Palghar. The State has filed an application seeking cancellation of bail. In fact Shri Dolare could explained the circumstances in which the sale deed was executed on the basis of power of attorney in all probabilities the original relevant documents could be in his custody. The applicant can be held to be a bonafide purchaser, although it is alleged by the complainant that he had acted in conspiracy with Shri Dolare. Be that, as it may, this is not a case where custodial interrogation of the applicant would be imperative.

7 The observations made herein above are prima facie in nature. The same shall not be considered while deciding application for discharge or application for quashing of FIR or at the time of trial. The learned trial Court shall decide the matter uninfluenced by the observations made by this Court.

8 Hence, following order is passed.

Order

I) 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 more solvent sureties in the like amount. The applicants shall report to the concerned Police Station on every Saturday between 10.00 a.m. to 1.00 p.m. for the period of 8 weeks and thereafter as and when required.

III) Intervention Application is heard, allowed and disposed of.

IV) Application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J.)