

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1618 OF 2014

Mrs. Rekha Harishchandra Hosurkar	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

WITH
CRIMINAL APPLICATION NO. 162 OF 2015
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1618 OF 2014

Vishwanath Ramchandra Panvelkar	...	Intervener
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IN THE MATTER BETWEEN

Rekha H. Hosurkar	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.Tapan Thatte, for the Applicant.

Ms.A.T. Javeri,APP for the Respondent – State.

Ms. Asmita S. Sarangdhar for Intervenor in Criminal Appln. No. 162 of 2015

CORAM : REVATI MOHITE DERE, J.

DATED : 20th MARCH, 2015.

PC.

1. Heard learned counsel for the applicant and learned A.P.P. for the Respondent-State.

2. By this application, the applicant seeks pre-arrest bail in connection with C.R. No.I-89 of 2014, registered with the Shivaji Nagar

Police Station, Ambernath, for the alleged offences punishable under Sections 420, 465, 471 read with 34 of Indian Penal Code.

3. According to the complainant, who is the brother of the present applicant, and also a Builder and Developer, the present applicant had prepared false entries and obtained wrong orders and thereby entered her name in the 7/12 extracts. According to the complainant, he had received information on 30-03-2014 that out of 15 plots, one plot was allegedly sold by the applicant to one Trupti Builders and Developer for which she received a sum of Rs. 5,00,000/-. It is alleged by the complainant, that the applicant had prepared a Memorandum of Understanding ("MOU") with the said builder and that the said document which shows the photographs and signatures of his brothers Hemant Babulnath Bandekar, Vijay Babulnath Bandekar and Rajendra Babulnath Bandekar are not theirs, and that the said MOU is a forged and fabricated document.

4. The learned counsel for the applicant submitted that in the year 2008 i.e. 07-07-2008 the applicants father had executed a Will, in favour of the first informant with respect to the suit property. According to the learned counsel, the applicant's father had encroached on government land and the same was later regularised on 19-10-2010.

Therefore, on 19-10-2010 the said suit property vested in the testator. On 03-10-2011 the father of the applicant and the complainant expired. He submitted that by virtue of the will, the property did not vest in the first informant. As far as the applicant's three brothers i.e. Vijay Babulnath Bandekar, Hemant Babulnath Bandekar and Rajendra Babulnath Bandekar are concerned, they had relinquished their rights in the suit property and therefore, the dispute is only between the applicant and the complainant.

5. Learned counsel for the applicant submitted that as the first informant has entered his name in the record of rights i.e in the 7/12 extract, the applicant filed an appeal before the Deputy Collector (Appeals), Thane which came to be allowed vide order dated 14-08-2014 in favour of the applicant. Against the said order dated 14-08-2014, the first informant preferred a Revision Application before the Additional Commissioner, Konkan Division, which came to be dismissed. Against the dismissal of the Revision Application, the first informant approached the Revenue Minister, who also confirmed the order of dismissal passed by the Additional Commissioner, Konkan Division. Thereafter, the complainant preferred a Writ Petition in this Court which was withdrawn with liberty to file a Civil Suit. Accordingly, on 1st November, 2014, a suit was filed by the complainant, wherein an order of status-quo in respect of the suit

property was passed. It appears that during the pendency of the appeal, before the Revenue Minister, the present FIR was lodged. The possession of the suit property is with the complainant.

6. Learned counsel for the applicant submitted that the MOU alleged to have been entered into, between Trupti Builders & Developers and the present applicant was not signed by the applicant. He submits that admittedly the said MOU has not been executed nor was acted upon and is also not a registered document. He submitted that on the contrary, it is the complainant, who has prepared this forged and fabricated document i.e. MOU to grab the suit property.

7. The learned APP vehemently opposed the bail application. She submitted that the custody of the applicant is required for procuring the original MOU which was entered into by the applicant with Trupti Builders. She further submitted that the signature of the applicant appearing on the MOU and the signature on this application are similar. She also submits that the dispute with regard to the signature on the MOU has been raised for the first time by the applicant in this Court.

8. Perused the papers of investigation and the affidavit in reply filed by the Investigating Officer as well as the MOU. Admittedly, even according to the complainant, the said document i.e. MOU was obtained

from his cousin brother, namely Kishore Dalal, who had taken it from one agent, whose name he is not aware of. The said agent is stated to have been working with a builder Harsh Makhija. The source of the MOU has not been traced. The statement of the notary also does not show that the applicant was present at the time when the MOU was signed. Admittedly, the document is not a registered document and has not been acted upon. The bank statements of the applicant also does not reflect that an amount of Rs. 5,00,000/- allegedly paid to her by Trupti Builders & Developers has been credited into her account.

9. Considering the nature of allegations, the dispute between the parties with regard to the suit property; and the fact that the evidence is documentary in nature, the custodial interrogation of the applicant is not required. Accordingly, the applicant deserves to be granted pre-arrest bail on the following terms and conditions :

ORDER

i) In the event of the arrest, the Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount ;

ii) The Applicant shall attend the concerned Police Station as and when called for by the Investigating Officer ;

iii) The Applicant shall not tamper or attempt to influence any person concerned with the case ;

iv) The Applicant shall co-operate in the conduct of the trial.

10. The Application is allowed and disposed of in above terms.

11. In view of the order passed in Anticipatory Bail Application, the intervention application does not survive and is disposed of.

12. The aforesaid observations are prima facie, and the court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

13. Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)