IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.630 OF 2016

Mrs.Piloo Parvez Mehta ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.R.A. Shaikh i/b Mohd. Irafan Momin for the Applicant in ABA/630/2016

Mrs.P.P. Shinde, APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **MAY 5, 2016**

P.C.:

1. The applicant-accused is facing prosecution for the offences punishable under sections 465, 467, 468, 470, 471, 191 r/w 34 of the Indian Penal Code in C.R. No.I-42 of 2016 registered at the instance of one Govind S. Gambhire, Police Inspector, on 24.2.2016 with Kasarvadavali police station, Thane. It is the case of the complainant that he received one letter / application by name Siloo Dhanjishaw Mistri, 90 years old from Napensea road, Mumbai on 5.1.2012. In the said application, Siloo Mistri has objected to one agreement bearing registered No.4381 of 1989 which was registered on 9.12.1989 which had allegedly taken place between Siloo Mistri and Samarth Development Corporation in respect of land bearing survey No.79/2 and 80/2 at Mauje Borivade,

Taluka and District Thane. In the said application, the said Siloo Mistri has complained that the said agreement was bogus and it was executed and registered with the intention to grab her land and so she registered the offence of cheating and forgery against the persons. It was also mentioned in the application that she being an old lady, her brother Kersi Minu Guard be allowed to appear for further statements as she has given authority letter to him alongwith photocopies of her PAN card and Election card. Pursuant to the complaint, the police started enquiry.

At that time, on 5.12.2015, the police station received one more complaint dated 7.12.2015 from one Satish P. Shetye, who presented it on behalf of the New Shri Swami Samarth Borivade Housing Company i.e., the purchasers of the land shown in sale deed of 1989 and it was mentioned that the said land is owned by Siloo Mistri, however, one Gilbert John Mendonca, who is a co-accused in this C.R., prepared false documents on the basis of bogus conveyance deed of 1981 and thereafter applied for entering his name in 7/12 extract. However, Samarth society took objection to the said application as they were called and they filed enquiry application before the Tehsildar, Thane, being application No.16769 of 2015 on 27.10.2015 and they have issued notice to the Collector, Thane on 23.10.2015. The police after inspection of the documents in the Tehsildar office found that Gilbert Mendonca has

presented a bogus deed of conveyance, which is numbered at 930/1981 and, therefore, the offence was registered against Gilbert Mendonca and the record-keeper one Mr.Gaikwad in Thane Nagar police station. The police collected all the documents pertaining to the land and also tried to contact the original complainant Siloo Dhanjishaw Mistri, who gave the complaint application earlier. However, they found that the address given in the said application is not available and so also either Siloo Mistri or Kersi Guard did not appear in Kasarvadavali police station. However, the police realised that Siloo Mistri had filed a criminal Writ Petition No.4931 of 2015 in the Bombay High Court on 15.12.2015 praying for transfer of investigation as it was not honest and satisfactory and, therefore, the police were asked to remain present on 6.1.2016 before the High Court. At the time of hearing of the writ petition, before the Division Bench, an advocate Mr.G.B. Lal, co-accused, appeared for the petitioner alongwith other counsel. However, at that time, Senior Counsel Mr.Jehangir Mistri appeared in the Court and took objection to the petition and he informed that the petition was filed in the name of his mother Siloo Mistri, however, in reality, his mother has not filed any petition and never gave any application to the police station. However, he stated that his mother Siloo is the real owner of the impugned land. At that time, the honourable Division Bench directed that the lady who claimed to be Siloo Mistri and who filed the petition should remain present before the Court as it was

informed that she was in the corridor. However, she did not come before the Court and at that time, the Senior Counsel Jehangir Mistri told that this petition is filed by forging the signature of his mother and by impersonation. On the next date, the matter was fixed by the Division Bench and the lawyer of the petitioner G.B. Lal and one Sonawane, the clerk of the advocate, who had identified the petitioner as Siloo Mistri, were asked to give explanation. On 7.1.2016, the Senior Counsel Jehangir Mistri alongwith his aged mother Siloo Mistri appeared before the Court. However, the petitioner or her representative did not appear. All genuine papers of real Siloo Mistri were produced before the Court. After going through those papers, the Division Bench directed the petitioner to appear before the Court on 14.1.2016 alongwith the petitioner i.e., the present applicant-accused and her lawyer i.e., the other co-accused Gayaprasad B. Lal. On 14.1.2016, the complainant officer appeared before the Court at that time and on that day also, the alleged Siloo Mistri did not remain present. However, her brother Kersi Guard, who is the co-accused was present and again the matter was adjourned to 21.1.2016 for filing an affidavit of the petitioner and on that day, the present applicant Piloo Mehta appeared before the Court and she told the Court that she presented herself as Siloo Mistri at the instance of her brother Kersi Guard.

At that time, Kersi Guard, the co-accused, who was also present, disclosed to the Division Bench that he and his sister had done all the acts at the instance of the co-accused Gilbert Mendonca and Ashok Hire. The Division Bench directed to record the statements of these persons in the Court premises. Thereafter, at the time of investigation, it was found that the real owner had Siloo Mistri entered into the registered agreement of sale in 1989 with Samarth Builder. However, the name of Samarth Builder was not entered into 7x12 extract due to certain technicalities. However, Gilbert Mendonca, the co-accused and Ashok Hire hatched the conspiracy alongwith the help of present applicant-accused Piloo Mehta and her brother Kersi Guard to grab the land and they prepared a forged registered conveyance dated 17.9.1981 of survey Nos.79/2 and 80/2, wherein it is shown that Siloo Mistri has sold this land to Gilbert Mendonca. In June, 2015, Gilbert Mendonca filed a civil Suit No.469 of 2015 before the civil Court at Thane for specific performance against Siloo Mistri. Pilloo Mehta appeared as Siloo Mistri. In August, 2015, both the parties i.e., the sham Siloo Mistri, i.e., the real Piloo Mehta and Gilbert Mendonca, who is a fake purchaser of the said land, filed consent terms. They compromised the matter before the civil Court at Thane and filed consent terms and the suit was disposed of. On the basis of consent terms and the bogus registered sale deed of 1981, Gilbert Mendonca applied for entering his name in the revenue record of survey No.79/2 and

80/2. At that time, it was objected to by Samarth builders and as it was objected to, Siloo Mistri filed complaint on 5.12.2015 against Samarth Builders that they have played fraud and tried to grab the land. Thereafter, the offence was registered as the police found that all the documents filed by Siloo Mistri and Gilbert Mendonca, Ashok Hire and Kersi Guard are bogus and the lady represented before the High Court has filed a false Writ Petition by impersonation before the High Court and also filed a suit before the civil Court and thus, lodged present C.R. against all the accused.

2. The learned Counsel appearing for the Piloo Mehta has submitted that Piloo Mehta is innocent. She is 75 years old. She did not know anything. She was asked to do all the acts including signing the documents, introduced herself as Siloo Mistri; represented and signed as Siloo Mistri at the instance of her brother Kersi Guard and the co-accused Ashok Hire and Gilbert Mendonca. She did not receive any benefit out of this representation. She was forced to sign the documents and, therefore, she is to be granted pre-arrest bail.

3. Learned Prosecutor has opposed the pre-arrest bail application. She submitted that Piloo Mehta knew that she is not Siloo Mistri and she was fully aware that she is using the bogus and forged documents in the

name of Siloo Mistri. She pointed out that the land bearing Survey Nos.79/2 and 80/2 is admeasuring 108 acres at Borivade village and the market value of the said land is Rs.534 crores and 71 lakhs. She submitted that the joint account was opened in the names of the brother and the sister i.e., Kersi Guard and his sister Piloo under the fake name of Siloo Mistri. At the time of opening the bank account, Piloo Mehta i.e., the applicant-accused represented that she is Siloo Mistri and by 2 cheques of Rs.50 lakhs totalling to Rs.1 crore was transferred on 19.6.2015 in that account by Gilbert Mendonca. She, therefore, submitted that she should not be protected by bail.

4. The role attributed to the applicant-accused prima facie reveals the offence of misappropriation and cheating. The applicant-accused has forged the documents and signed before the Court as also before the office of the Tehsildar as Siloo Mistri. She also went before the civil Court at Thane i.e., the Suit No.469 of 2015. She and her brother also received money i.e., Rs.50 lakhs each in their joint account and benefited for whatever she has received. Thus, this payment is undoubtedly is for her impersonation before the various authorities. The submission that she might have been forced by her brother or Gilbert Mendonca, however, at this stage, cannot be accepted under section 438 of the Code of Criminal Procedure. Although, the applicant is a lady and 75 years of age, in any

normal case, this Court would have used its discretion in favour of such applicant-accused, however, in this case, I am not inclined to grant her protection.

5. Accordingly, the Anticipatory Bail Application is rejected.

(MRIDULA BHATKAR, J.)