

Nalawade

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.650 OF 2015

Mandar Ratnakar Chogle	...Applicant.
vs.	
The State of Maharashtra	...Respondent.

Mr.Shirish Gupte, Senior Advocate with M.S.Mohite i/by
S.P. Mishra for the Applicant.
Mr.Deepak Thakare, APP. for the State.
Mr. Niranjana Mundargi for the Intervenor.

CORAM :A.S.GADKARI, J.
DATE : 28th September, 2016

P.C.

1. This is an application under Section 438 of the CR.P.C. for pre-arrest bail in CR No.177 of 2014 originally registered with Borivali Police Station under Section 420, 465,467,468,471,120B of the Indian Penal Code and now being investigated by EOW, CB, CID, Unit 3 having renumbered CR No.56 of 2014.
2. Heard the learned counsel for the applicant, the learned counsel for the original complainant and the learned APP. Also perused the documents annexed to the application and the papers of investigation.
3. The first information report is lodged by Dr. Smt. Padmaja Sunil Patil on 7.2.2014. It is stated in the said report that the applicant with a view to engulf her

share from the ancestral property which as of today has market value of crores of rupees, manufactured and/or fabricated her deed of relinquishment and subsequently got it registered with the Registrar of Assurances, Mumbai. It is stated in the said report that on 28.10.2013 the complainant had undergone major operation/surgery and she was discharged from the hospital on 1.11.2013. That, the applicant used to inform the complainant about the difficulties which he was facing in the cases relating to the Income Tax Department. That on 11.11.2013 at about 8.30a.m. the applicant had been to the dispensary of the complainant and informed her that certain documents are to be sent immediately to the Income Tax Officer at Surat and requested her to sign the said documents, due to which he would approximately save Rs.9.00 lacs towards the income tax. It is contended in the said report that it was written in the said document that the complainant was relinquishing her right in the property which is being inherited by her. It is further stated that the said document of deed of relinquishment is subsequently registered with the Registrar of Assurances and when the complainant minutely perused the said document she realized that Page 7 of the said deed has either been forged or fabricated while submitting the said document for registration. It is stated in the said report that the signature of her daughter namely Ms. Nrupa Sunil Patil was appearing on the said document without there being any thumb impression. That,

on 6.11.2013 she informed the said fact to her father, to which her father told her that he will take care of the same. The complainant thereafter visited the office of the Registrar of Assurances and after meeting Smt. Meher, Joint Dy Registrar from the Office of Registrar of Assurances, Borivali, realized the fact that the applicant with an intention to grab her share in the ancestral property has prepared a forged deed of relinquishment and presented it for registration on 14.11.2013. In the premise, the first information report is lodged.

4. The learned counsel for the applicant submitted that as a matter of fact as of today the applicant has filed an affidavit in the Court with a contention that he is not going to take the benefit of the document which is alleged to have been fabricated by the applicant. He also submitted that the complainant has already filed a suit for declaration and partition inter alia claiming her share in the ancestral property. He further submitted that the father of the original complainant in his affidavit dated 15.1.2016 at Para 13 has stated that the alleged original deed of relinquishment/released deed dated 14.11.2013 was handed over to the complainant on 21.11.2013 and that the custody of the said document is with the original complainant Mrs. Padmaja Patil. He further submitted that what is alleged by the complainant and the prosecution is an interpolation and/or overwriting while typing the internal page No. 7 of the said document and

for making a minor enquiry of the same the custody of the applicant is not necessary. He further submitted that by a notice addressed by the Advocate for the applicant, the applicant has inter alia stated that he will not use the said document after the death of his father. That, his father has bequeathed the entire property, the applicant is not desirous or intending to claim the benefit of the said deed of relinquishment. He further submitted that the applicant has attended the Investigation Officer on several occasions and has co-operated during the process of investigation and for further investigation his custodial interrogation is not necessary and required. He also contended that complainant was present before the Joint Deputy Registrar in the Office of Registrar of Assurances at the time of registration of the said document and she never raised any grievance about the authenticity of the said document till the lodging of the FIR. He further submitted that it is only after the father denied her share in the property she has lodged the present FIR. He lastly contended that in view of the Judgment delivered by the Supreme Court in the case of Siddharm Satlingappa Mhetre vs. State of Maharashtra reported in AIR 2011 SC 312 and in particular, Para 122 of the said judgment the applicant is entitled to be released on pre-arrest bail. He therefore, prayed that the applicant may be granted pre-arrest bail.

5. Per contra, the learned APP and the learned counsel appearing for the original complainant vehemently

opposed the application. The learned APP also produced for my perusal the original file of the investigation.

6. At this stage a useful reference can be made to the decision of the Constitution Bench of the Supreme Court in the case of *Gurbaksh Singh Sibbia v. State of Punjab* reported in (1980) 2 Supreme Court Cases 565. In the said decision the Supreme Court has held that the Judges have to decide the cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. No two cases are alike on facts and therefore, Courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. It is further held that the nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable apprehension that witnesses will be tampered with and “the larger interests of the public or the State” are some of the considerations which the Court has to keep in mind while deciding an application for anticipatory bail.

7. At the outset, it is to be noted here that the first document dated 12.11.2013 executed by the complainant thereby relinquishing her right in the property is a notarized document wherein the signature of her daughter-Ms. Nrupa Sunil Patil with her thumb impression appears at internal page No.2. That, the thumb impression of Mrs. Padmaja Sunil Patil appears to have been wiped out from Page No.7 from the subsequent document. It

further prima facie appears that the stamp of the Advocate and Notary are also hexed out or obliterated from the subsequent document. In her statement Smt. Kunjlata Meher, Joint Dy. Registrar from the office of Registrar of Assurances, Borivali has stated that while registering the said document which is at Page Nos.26 to 32 to the present application, the applicant complainant Smt. Padmaja Patil and witnesses were present and no other person was present at the time of registration. However, as stated earlier the record discloses that the name and signature of Ms. Nrupa Sunil Patil is appearing on the last page of the said document. i.e. on page No.7. That, the document in question which was subsequently presented for registration is having 7 pages and it prima facie appears that internal Page No. 7 (Page 32 of the present application) is forged or fabricated by using an advance technique such as the super imposition technique. The police have seized the document namely photo copy of the register from the office of the said authority and as per the record maintained by the said authority the applicant herein had collected the original document after its registration on 14.11.2013 between 1.10 to 1.15p.m. The Investigation Officer Shri. Chandrashekhar B. Gaikwad has also filed a brief reply in opposition of the present application and has placed on record the reasons for custodial interrogation of the applicant. The record further reveals that the signature of the complainant is effected on other pages of the said

document also. The learned Trial Court while rejecting the application of the applicant for pre arrest bail has recorded a finding that the custodial interrogation of the applicant is necessary to ascertain as to how he has created those signatures and that the said prima facie material and the allegations that one signature is copied down from those pages make recovery of instruments like computer, printer scanner is relevant. It is further recorded that such instrument appears to have been used are something which can only be secured or recovered after the custodial interrogation of the applicant. In my considered opinion the finding recorded by the Trial Court is just, right and proper and does not require any interference.

8. After taking into consideration the material available on record, serious allegations against the applicant and the gravity of the offence, in considered opinion of this Court the custodial interrogation of the applicant for further investigation in the present crime is necessary for unearthing the entire truth behind the present crime and without which the police will not be in a position to reach to its logical conclusion.

In view of the above, I find no merits in the application and the same is accordingly dismissed.

9. At this stage the learned counsel appearing for the applicant submitted that the applicant has been protected by way of interim relief since 6.5.2015 and the said relief may be extended for four weeks from today as

the applicant intends to test the correctness of this Order before the Hon'ble Supreme Court. The learned APP and the counsel for the original complainant opposed the said prayer. However, after taking into consideration the fact that the applicant is protected by way of interim relief since 6.5.2015 the said interim relief is hereby extended by four weeks from today.

(A.S.GADKARI, J.)