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

**ANTICIPATORY BAIL APPLICATION NO.897 OF 2016**

Rizwan Sayed Abdul Gafoor and others …. Applicants
V/s.
The State of Maharashtra and ors …. Respondents

Mr. G.S. Godbole, Advocate a/w Mr. Sumit Kothari and Ms. Shivani Sanjay Samel, for the Applicant.
Mr. Y. M. Nakhwa, APP for the Respondent State.
Mr. Shekhar A. Ingawale, for the intervener.

**CORAM : A. M. BADAR, J.**

**DATE : 17th JUNE, 2016.**

**P.C. :**

1. Applicants/accused in Crime No. M-7 of 2015, registered with Taloja Police Station, District: Raigad, for offence punishable under Sections 403, 405, 409, 415, 416, 420 and 442 read with Section 34 of the Indian Penal Code, at the instance of complainant Rais Ahmed Mohd. Rafiq Patel, by this application are seeking pre-arrest bail .

2. Heard the learned counsel appearing for applicants, learned APP for State and the learned counsel appearing for the intervener.

3. By taking me through the entire compilation of documents,

filed alongwith application as well as the F.I.R. and order of the learned Additional Sessions Judge, it is argued by learned Senior Counsel for applicants that the entire transaction between the parties is of civil nature and the complainant was very well aware about the Memorandum of Understanding as well as Power of Attorney executed by his mother Ayeshabibi (since deceased). Learned counsel further argued that in Special Civil Suit No.109 of 2011, filed by Ayeshabibi for partition and separate possession of her property, complainant Rais Patel, his father and two sisters had made application for substituting their names as plaintiffs and in similar way applicants have also applied for their impleadment and on rejection of this application, matter is pending before this Court in appropriate proceedings.

4. The learned counsel further argued that the Memorandum of Understanding executed by deceased Ayeshabibi, is also signed by complainant Rais as well as father and sisters. The learned counsel further argued that even in the order dated 4.4.2013, passed in Special Civil Suit No.119 of 2008, which was filed by sisters of Ayeshabibi, the Memorandum of Understanding executed by deceased Ayeshabibi is reflected. It is further argued that avernments in the complaint which has resulted in registration of the offence is only limited to Memorandum of Understanding as well as Power of Attorney, executed by deceased

Ayeshabibi. The learned counsel further argued that subsequently four deeds of assignments were executed by the complainant as well as father and sisters and the necessary amount was deposited in their bank account. The withdrawal of amount from the bank account of the complainant and his relatives is in terms of agreement dated 1.7.2013 executed by them with the father of applicants. It is further argued that civil suit in the matter of those four deeds of assignment is still pending and the entire subject matter is of civil nature. Therefore, according to learned counsel for applicants, they are entitled for pre-arrest bail.

5. As against this, the learned APP argued that statement of complainant Rais as well as that of Manager of Konkan Mercantile Bank Ltd goes to show that the present applicants have cheated the complainant as well as his relatives and defrauded them, by withdrawing amount of consideration, received by them towards execution of four deeds of assignment on 2.7.2013.

6. I have also heard the learned counsel appearing for the complainant. He vehemently argued that considering the entire nature of transaction, it is crystal clear that the present applicants were harbouring intention of cheating since inception. Amount was required by deceased Ayeshabibi for her medical treatment, therefore, as a security Memorandum of Understanding was executed and ultimately applicants

have refused to accept that amount advanced as a loan for medical treatment. Subsequently applicants got executed four deeds of assignment under threat when offence was registered against the complainant and his relatives at the instance of applicants. He further argued that complainant andl his relatives were not even knowing that amount of Rs.50,00,000/- was deposited in their account. That amount was withdrawn by applicants as well as their relatives by cheques without knowledge of the complainant and his relatives. Therefore, according to learned counsel for the complainant as the offence is of serious nature, applicants are not entitled for pre-arrest bail.

7. Perused the case diary as well as material produced alongwith application. It is seen that Ayeshabibi who was the mother of complainant Rais Ahmed Patel, was having some share i.e. 1/18th or 1/20th in the property acquired by the State and ultimately handed over to the CIDCO. As per the scheme, the owner of such property is entitled to 12.5% of the acquired land in the shape of developed plot.

8. It is seen that Ayeshabibi Patel had instituted Special Civil Suit bearing No.109 of 1999 for partition and separate possession of her share in the plot which was to be handed over to the owners by the acquiring authority.

9. My attention is drawn to the memorandum of Understanding

as well as irrevocable power of attorney executed by deceased Ayeshabibi on 10.5.2005 in favour of present applicants. Clause Nos. 3 and 9 of the Memorandum of Understanding are relevant. For consideration of Rs.5,00,000/-, Ayeshabibi had assigned her share in favour of present applicants. Perusal of Memorandum of Understanding makes it clear that complainant Rais Ahmed Patel, so also his father Mod. Rafiq Patel and sisters Rubina Sufiyan and Themina Abdul Karim are signatories to that Memorandum of Understanding, as well as to irrevocable power of attorney of the very same date.

10. As against recitals in these documents, according to complainant these documents are executed by Ayeshabibi as she was suffering from illness was in need of money. In these proceedings, such dispute cannot be resolved. Suffice to state that documents executed by deceased Ayeshabibi do not show that those were executed.

11. Be that as it may, it seen that on 21.1.2006 Ayeshabibi died and thereafter her sisters namely Mumtaj Begaum Umarmiya Patel and Khatijiba Mahamad Yanupar Patel have filed another suit for partition and separate possession which is registered as Special Civil Suit No.119 of 2008. My attention is drawn to the order dated 4.4.2013, which is on record at page No.67, by which application of present applicants under Order I, rule 10 of Code of Civil Procedure came to be allowed by

directing their impleadment as party defendant in suit. The said order reflects the Memorandum of Understanding and irrevocable power of attorney executed by Ayeshabibi in favour of present applicants.

12. Perusal of the complaint filed by complainant Rais Ahmed Mohmed Patel which has resulted in passing of order under Section 156(3) of the Code of Criminal Procedure and thereafter leading to the registration of crime in question, will make it clear that same was filed immediately after a day on which application under Order I rule 10 of Code of Civil Procedure, filed by present applicants in Special Civil Suit bearing No.119 of 2008 came to be allowed and present applicants were directed to be made party defendant in the said suit.

13. Perusal of the complaint lodged by Rais Ahmed Mohmed Patel, before the learned Judicial Magistrate First Class, goes to show that avernments of the complaint are to the effect that the Memorandum of Understanding and Power of Attorney are forged documents. The complainant averred that these documents are in English and some of the contents are in hand-writing. The complainant further alleges that he as well as his family members do not recollect whether they had signed those documents and the amount so received by them was for medical treatment of Ayeshabibi. On this complaint as per the order under Section 156(3) of Code of Criminal Procedure, F.I.R. came to be registered.

14. My attention is drawn to the deeds of assignment executed by complainant Rais Ahmed as well as by his father and sisters individually on 2.7.2013. Opening paragraphs of these four deeds of assignment contain recital to the effect of pendency of Special Civil Suit No.109 of 1999, execution of Memorandum of Understanding as well as Power of Attorney and receipt of Rs.5 lacs from applicants. By these deeds of assignments, the complainant, his father as well as sisters have assigned their rights in the property in favour of applicants for consideration of Rs.12.5 lacs payable to each of them. It is seen that after the execution of these deeds of assignments which are registered on 3.7.2013, compilation Rais, his father as well as sisters preferred application for substituting present applicants as plaintiffs in Special Civil Suit No.109 of 1999 and similarly such application was separately moved by present applicants. These documents are placed on record. After rejection of those applications, the matter is reported to be subjudiced before this Court.

15. This is the history of execution of documents as well as pendency of various civil proceedings between the parties. In this factual backdrop, according to learned APP, the entire amount of consideration paid to the complainant and his relative was fraudulently withdrawn by present applicants. For that purpose, reliance is placed on letter of

Konkan Mercantile Bank Ltd, showing withdrawal of amounts as well as statement of the Manager of the said bank. It is contended that not a single pai is received by the complainant as well as his relatives.

16. It is seen from the case diary that the complainant as well as his father and sisters had drawn several cheques payable to themselves. Those cheques are bearer cheques and as per letter of the bank, the amount mentioned in those cheques is withdrawn by present applicant No.1 Rais as well as his relatives. Signing of these cheques by the complainant party is not disputed and the concerned bank has passed these cheques for realising the payments. Cheques are issued by the complainant and his relatives. It is not the case of prosecution that signatures on these cheques are forged and that those cheques were never issued. Why those cheques were signed and allegedly delivered to applicants is also not clarified by the non applicants.

17. On this backdrop, my attention is drawn to the agreement dated 1.7.2013, executed between the father of present applicants and the informant and his father, This agreement dated 1.7.2013 contain recitals that an amount of Rs.24 lacs should be paid in advance to the complainant so as to enable them to execute deed of assignment. Receipt of that amount appears to have been issued. Immediately on the next date, deeds of assignments are executed. Thereafter the

complainant as well as his father and two sisters have filed Special Civil Suit No.375 of 2015, for cancellation of these four deeds of assignments executed by them with allegations that those are got executed fraudulently by present applicants and that they have not received the consideration for executing those four deeds of assignment.

18. This is the nature of evidence collected against the applicants during the course of investigation, so also history of litigation and transactions between the parties. Prima facie it is seen that parties are having civil disputes since long and even deeds of assignment executed by complainant and his relatives are challenged and are pending adjudication by competent civil court. In the wake of this chequered history, dispute appears to be predominantly of civil nature, the custodial interrogation of present applicants is not at all warranted. Even otherwise entire case is based on the documentary evidence. Therefore, the following order.

Order

I) The application is allowed.

ii) In the event of arrest of applicants in above crime, they be released on bail on their executing P.R. bonds in the sum of Rs.1,00,000/- by each of them and on furnishing sureties in the like amounts.

iii) Applicants shall not, directly or indirectly, make any inducement, threat or promise to persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

iv) They shall attend the concerned police station on on every Sunday in between 11.00 a.m. to 1.00 p.m., for a period of two months and shall co-operate the Investigating officer.

v) Applicants should not tamper the prosecution evidence in any manner.

**[A. M. BADAR, J.]**