

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1239 OF 2016

Nitin Baliram Dervankar.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1240 OF 2016

Rahil Siraj Kavchali.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Ms. Rajalaksmy Mohandas, advocate for Applicants.

Mr. S.H. Yadav, APP for State.

Mr. Sachin D. Dabhade, PSI, Khed Police Station, Ratnagiri.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 31, 2016**

P.C.:

1 Heard the learned Counsel for the applicants and the learned
APP for State. Perused the papers.

2 These are the applications under Section 438 of the Code of Criminal Procedure, 1973. The applicants are apprehending their arrest in Crime No. 145 of 2015 registered at Khed Police Station for offence punishable under Section 465, 468, 470, 471, 472, 416, 420 read with section 34 of the Indian Penal Code.

3 It is the case of the prosecution that the complainant happens to be the grand-daughter of Shaikh Abdulla Eshamuddin Jamadar. She lodged first information report alleging therein that they have lands at village Sanglat Gat No. 209 admeasuring 424 gunthas. According to her, on 1/9/2013 her grand-father who was at the relevant time residing in Cape Town, South Africa had expired. On 24/3/2015 on the basis of the power of attorney given in her favour, she had approached the office of Talathi for mutation and had filed an application before the Talathi at Koregoan. On 24/9/2015 the names were mutated. At that time, in respect of land Gat No. 209, the names were not mutated and she learnt that the said plot has been sold in favour of Jyotsna B. for a consideration of Rs. 6,82,500/-.

According to her, the land was sold by the present applicants on the basis of the power of attorney executed by her grand-father in his favour. That Jyotsna B. is in possession of the said land. It is also alleged that the applicants herein have fabricated the documents, such as power of attorney and has forged signature of her grand-father.

4 The learned Counsel for the applicant submits that the land was sold in favour of Jyotsna B on 14/2/2012 by the present applicants and the grand-father of the first informant had expired in 2013. After two years, she had approached the office of Talathi for mutating the names on the basis of the power of attorney executed in her favour. According to the learned Counsel, there is a delay of more than 4 years in lodging the complaint. According to the learned Counsel, the original power of attorney, by passage of time, is not in the custody of the applicants but after executing the sale deed he had returned the original documents to the executor of the power of attorney. The learned Counsel therefore, submits that in the above

circumstances, custodial interrogation will not be imperative and that the applicant would subject themselves to an enquiry/interrogation by the Investigating Officer and cooperate with the investigation to the best of their capacity.

5 Taking into consideration the nature of allegations and the fact that the prosecution is initiated almost after 3 years of the demise of the original executor of the power of attorney, the applicants deserve pre-arrest bail.

6 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same while deciding the application for discharge or quashing of FIR or at the time of trial.

7 Hence, following order is passed :

ORDER

- (i) Both the applications are allowed.
- (ii) In the event of arrest in Crime No. 145/2015, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- and one or two sureties in the like amount.
- (iii) The applicants shall not tamper with the evidence.
- (iv) The applicants shall report to the concerned police station from 3/9/2016 to 9/9/2016 everyday between 10 a.m. to 12 noon and cooperate with the investigating agency to best of their capacity.

(SMT. SADHANA S. JADHAV,J)