

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

ANTICIPATORY BAIL APPLICATION NO. 1894 OF 2016

Banarasi Hardev Patel & Ors.

.. Applicants

Versus

The State of Maharashtra

.. Respondent

Mr. S.V. Marwadi i/b. Mr. S.I. Kantharia, Advocate for the Applicants.

Mr. A.S. Patil, A.P.P. for the Respondent – State.

Mr. R.A. Shaikh, Advocate for the original complainant.

CORAM : N.W. SAMBRE, J.

DATED : 7th DECEMBER, 2016.

P.C. :

1 The applicant is seeking pre-arrest bail in Crime No.295 of 2016 for the offences punishable under sections 420, 406, 465, 468, 471 r/w. 34 of the I.P.C.

2 The sum and substance of the complaint as could be gathered from the contents of the F.I.R. is the applicant falsely claiming to be the only legal heirs of one Barsati approached this Court and got letter of administration in relation to estate of late Barsati. It is then claimed that after getting letter of administration, the genuine legal heirs of Barsati were ousted and the present applicants got mutated property of late Barsati through legal heirs of Barsati were alive.

3 The property thereafter appears to have been transferred by third persons vide conveyance executed on 06.05.2016 to which admittedly the applicants are not parties or beneficiaries.

4 In the above referred background, the learned counsel for the applicants while trying to make out the case for grant of bail would urge that the applicant could not be roped in as accused particularly having regard to the scheme of Chapter 11 of the Indian Penal Code. According to him, unless there are finding recorded by the appropriate Court that the applicant has given false or fabricated evidence for securing benefits in the form of judicial verdict and such Court having recorded satisfaction that such false / fabricated evidence is actually used for getting such benefits then the procedure as is contemplated is required to be followed i.e. a complaint pursuant to the order of such Court. In addition, the learned counsel would submit that the stage at which applicants are roped in is premature and according to him the entire offence is based on documents, as such their custodial interrogation is not warranted.

5 Per contra, the learned A.P.P. who is assisted by the learned counsel for the complainant, would submit that the custodial interrogation of the applicant is very much necessary as at the behest of the applicant, false entries in the revenue record were noted. Applicants have misuse the letter of administration obtained after the death of Barsati which speaks of prima facie involvement. Perused the investigation carried out till date.

6 It appears that the complainant and the applicants are litigating before the Civil Court into the various proceedings. The complainant has already initiated proceedings for revocation of letter of administration issued in favour of applicants.

7 Apart from above, what could be noted from the alleged act of tendering false or fabricated evidence is, there are no finding recorded by any of the Courts so as to form an opinion that the applicants are involved in the alleged crime.

8 It is as such rightly pleaded that it is premature to say that applicants have committed the offence in question.

9 As the entire offence as is alleged is based on documents, in my opinion, the custodial interrogation particularly in the light of observations made herein above, is not warranted. In view thereof, the application needs to be allowed.

8 In the event of arrest, the applicant be released on bail on executing PR. Bond of Rs.50,000/- with one or two sureties in the like amount. The applicant shall attend the Police station from 20th to 22nd December 2016 between 10.00 a.m. to 12.00 noon and thereafter as and when called. The applicant shall not tamper with the evidence or influence the witnesses.

(N.W. SAMBRE, J.)