IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.58 OF 2017

Nelliparambil Karappan Bhupeshbabu
& Ors. .... Applicants

versus

State of Maharashtra ... Respondent

…....

- Mr.D.A. Nalavad, Advocate a/w. Mr.A.N. Chamle, Advocate a/w. Mr.Mahesh Deshpande, Advocate a/w. Mr.M.S. Dehlvi, Advocate i/b. Dehlvi & Co., Advocate for the Applicant.
- Mr.Y.M. Nakhwa, APP for the State/Respondent.
- Mr.Shekhar A. Ingawale, Advocate for Respondent No.2.

CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 16th MARCH, 2017.

P.C. :

1. This application is moved for pre-arrest bail by the applicants/accused. The applicants/accused are prosecuted for the offences punishable under sections 415, 420, 464, 465, 467, 468, 469, 471 of the Indian Penal Code in C.R.No.114/16 of New Panvel Police Station. The offence is registered at the instance of Khadajabi Abdulla Dafedar on 23/06/2016.

2. It is the case of complainant that her father Hasan Khan Bubere was the owner of the land at village Ambe Taloja, Taluka-Panvel, District-Raigad. Her father expired in 1993. Thereafter she and her brother Mohinuddin Husein Khan Bubere and mother Sharifa inherited the whole property and thus she has share in the said property. Her mother died in 1997 and her brother died on 15/07/2016.

3. It is her case that Nazim Mohinuddin Khan Bubere, her nephew and son of Mohinuddin Khan Bubere found that the names of the applicants/accused were mentioned in 7/12 extract of their lands and therefore the complainant and her brother Mohinuddin gave application dated 26/06/2016 taking objection to the entries in the said 7/12 extract. Thereafter Nazim Mohinuddin and the complainant obtained documents and found that the applicants/accused have entered into bogus agreement of sale dated 25/01/2011, in which the complainant and Mohinuddin Khan were shown as vendors. A bogus power of attorney dated 05/05/2005 was also prepared by the

applicants/accused and by using the said power of attorney the subsequent transactions were made.

4. It is the case of complainant that on the basis of false bogus power of attorney and agreement of sale, the entry No.418 was made in the revenue record and therefore complaint was filed before Tahasildar bearing No.118/15 and the said entry was cancelled. Thereafter the applicants/accused filed R.T.S. Appeal No.289/15. After receiving the documents of appeal, the complainant was shocked to see that a forged sale deed dated 07/02/2015 was executed by the applicants/accused in respect of said land. It is further submitted that power of attorney dated 07/02/1995 executed by the complainant and her mother Sharifa were also produced and it is the case of complainant that she had never executed such power of attorney in favour of her brother. So it is her case that the applicants/accused forged signatures of the complainant. They have cheated the complainant and thereafter she filed a private complaint in the Court of J.M.F.C. Panvel, wherein the direction

under section 156(3) Cr.P.C. were issued and pursuant to which the offence was registered after investigation by the police.

5. The learned prosecutor submitted that there was transaction between Mohinuddin and the applicants/accused. He submitted that initially the total amount of consideration was fixed of Rs.9,36,000/-. He relied on the impugned agreement of sale, MOU, power of attorney, sale deed and Vachan Chitti dated 02/02/1995. He further submitted that the Vachan Chitti is signed by the complainant, her brother and her mother. That is the first documents in this transaction. He further relied on the notice given by him through his lawyer to Mohinuddin asking for the execution of sale deed. He submitted that at that time he has mentioned that total amount of Rs.5,09,000/- was paid and thereafter one Tata Sumo car of which the price was fixed of Rs.3,72,000/- was handed over to Mohinuddin as per his demand. It is further submitted that the car stood in the name of one Surpe, who is the witness to Sathe Karar dated 28/02/1995. He relied on the notice reply given by Mohinuddin wherein he has accepted the transaction. The learned counsel

further submitted that they have not committed offence of forgery or cheating.

6. The learned prosecutor and learned counsel for the complainant while opposing application have submitted that there was no payment of amount of Rs.9,36,000/- as claimed by the applicants/accused. The learned prosecutor and learned counsel have further submitted that the applicants/accused have played big fraud on the complainant. It is further submitted that in July 2015 Mohinuddin and the complainant filed a civil suit on 10/07/2016 for declaration and cancellation. It is further submitted that the power of attorney was never executed by the complainant in favour of Mohinuddin and that the power of attorney dated 07/02/1995 is bogus. So also the signatures on Vachan Chitti is also bogus.

7. The learned prosecutor relied on the report of the handwriting expert, which is in favour of the complainant, wherein it is mentioned that her signature is forged. The learned prosecutor further submitted that custody of the applicant is necessary.

8. Perused the complaint. Perused documents of the transactions between the parties. The main documents are power of attorney dated 07/02/1995 and the Vachan Chitti which is allegedly signed by the complainant and her mother. However, there is no report from the Government handwriting expert. The signature of the complainant is required to find out whether it is forged or not. The specimen signatures of the applicants/accused also can be obtained.

9. Perused the notice dated 05/07/2001 sent by one Bharat Navale, advocate of Panvel on behalf of client Mohinuddin to the applicants/accused. In the said notice he has agreed that he has entered into a transaction with the applicants/accused. He has also mentioned about handing over of Tata Sumo car. Thus, prima facie, it appears that Mohinuddin was aware of this transaction and in fact he entered into the land transaction with the applicants/accused. The complainant and her late brother Mohinuddin have filed a civil suit for

declaration and cancellation. Under such circumstances, considering nature of the transaction, I am of the view that custody of the applicants/accused is not required and hence pre-arrest bail is granted to the applicants/accused on following terms and conditions :

ORDER

(i) In the event of arrest, the applicants/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/- each with one or two solvent sureties each in the like amount.

(ii) The applicants/accused shall cooperate with the Investigating Officer and attend the concerned police station on every Monday between 11.00 a.m. to 02.00 p.m. till 23/04/2017.

(iii) The applicants/accused shall not tamper with the evidence or pressurize the complainant.

(iv) The applicants/accused shall not indulge into any criminal activity.

10. The application stands disposed of on above terms.

(MRIDULA BHATKAR, J.)

Nesarikar