

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPTORY BAIL APPLICATION NO. 659 OF 2017**

1.	Ardeshir Manecksha Irani @ Mubarak,	
2.	Yohan Ardeshir Irani @ Mubarak	...Applicants
	Versus	
	The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPLICATION NO. 356 OF 2017
IN
ANTICIPTORY BAIL APPLICATION NO. 659 OF 2017**

Mehernosh Adar Irani	...Intervener
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IN THE MATTER BETWEEN :

1.	Ardeshir Manecksha Irani @ Mubarak,	
2.	Yohan Ardeshir Irani @ Mubarak	...Applicants
	Versus	
	The State of Maharashtra	...Respondent

Mr. Vikas B. Shivarkar for the Applicants

Mr. Y. M. Nakhwa, A.P.P for the Respondent-State

Mr. Neel Pungaliya for the Intervener in APPP/356/2017

API Mr. Vitthal Salunkhe from Lashkar Police Station, Pune City, is present

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 21st APRIL, 2017

P.C.

1. Heard learned Counsel for the parties.

2. By this application, the applicants seek pre-arrest bail in connection with C.R. No. 162 of 2015 registered with the Lashkar Police Station, Pune, for the alleged offences punishable under Sections 420, 464, 467, 468, 471 r/w 120B of the Indian Penal Code.

3. The applicant No. 1 is the father of applicant No. 2. The dispute is with regard to a property situated at Boisar, having 52 acres of land. According to the complainant-Mehernosh Irani, his wife had not made any Will and that the two Wills produced by the applicants are forged and fabricated. It is alleged by the complainant, that by the said forged and fabricated Will purportedly made in the year 1986, it was shown that his wife had bequeathed 52 acres of land at Boisar in favour of the applicant No. 2 and his brother. He has stated that his wife expired in the year 1989, pursuant to which, the applicant No. 2 and his brother got their names mutated in 7/12 extract. He has stated that in 2014, the applicants issued a public notice in the newspapers, as they wanted to develop the said land i.e. 52 acres of land at Boisar. The complainant replied to the notice and raised an objection, however, the applicants went ahead and entered into a

Development Agreement. The complainant thereafter filed a Civil Suit in 2014 and filed an Exhibit 5 application, seeking injunction, which was rejected. The complainant challenged the said order in appeal and the appeal was allowed and injunction was granted. The said order was thereafter challenged by the applicants in this Court by filing Civil Writ Petition. It is informed that this Court has remanded the said matter back to the trial Court for considering the matter afresh.

4. Learned Counsel for the applicants submits that the applicant No. 1 is in the last stage of cancer and is presently in hospital. He further submits that applicant No. 2 was a juvenile at the time when the alleged forged Will was stated to have been executed and as such no offence can be said to have been committed by him.

5. Learned A.P.P opposed the application. He submitted that there are two Wills of 1986. He submitted that both the Wills, although of the same date, have several discrepancies including the discrepancy in the signature of the testator. Learned Counsel for the intervener supported the learned A.P.P. He submitted that in the trial Court, in the civil proceedings,

the applicants produced the Testator's purported first Will. He submitted that when the discrepancies were pointed out in the said Will, the second Will of the same date with corrections was produced by the applicants, in the Anticipatory Bail Application before the Sessions Court. He submitted that clearly there are discrepancies in both the Wills. According to the learned Counsel for the intervenor, the signatures of the testator in both the said Wills are different and that the said signatures also differ from the testator's real signature, which is on her passport. Learned A.P.P. has also pointed out the signature of the testator – Goolnar on the passport.

6. Perused the papers. The complainant-Mehernosh Irani and his deceased wife-Goolnar were residing in Canada since 1959 and were citizens of Canada since 1963. It appears that Goolnar had some property in India. It is alleged that Goolnar executed a Will in 1986 in favour of applicant No. 2 and his brother and bequeathed 52 acres land at Boisar. In 1989, Goolnar expired and in the very same year, mutation entry was done and the applicant No. 2 and his brother's names were mutated in 7/12 extract. Thereafter, in 2014, as the applicants wanted to develop the said property, they gave a notice in the newspapers for developing the said land.

The complainant replied to the notice, however, it appears that the applicants went ahead and entered into a Development Agreement. Pursuant thereto, a Civil Suit was filed by the complainant as against the applicants. The said Civil Suit is pending. It appears that in the civil proceedings, the applicants produced Goolnar's purported Will of 1986. When the complainant raised suspicion over the alleged Will made by Goolnar, another Will was produced by the applicants, wherein the mistakes which were made in the first Will and which were pointed out, were corrected. Although, it is contended by the learned Counsel for the applicants that Goolnar had signed two Wills on the very same date, the second Will was produced for the first time in the Sessions Court in the Anticipatory Bail Application. From a perusal of both the Wills, it appears, that the signatures of the testator are clearly different in both the Wills and the said signatures are again different from the signature of the testator—Goolnar on her passport. Apart from the said discrepancy in the signature, there are several other discrepancies in the Will.

7. *Prima facie*, there appears to be substance in the submission made by the learned A.P.P and the learned Counsel for the intervener, with

regard to the allegations of forgery of the Will. Hence, custodial interrogation of the applicant No.2 is necessary. As far as applicant No.1 is concerned, he is granted pre-arrest protection, as he is suffering from the last stage of cancer and is in hospital.

8. Accordingly, the application is partly allowed on the following terms and conditions :

ORDER

(i) In the event of the arrest, the applicant No. 1- Ardeshir Manecksha Irani @ Mubarakhi be enlarged on bail on executing P.R. Bond in the sum of Rs.20,000/- with one or two sureties in the like amount ;

(ii) The application stands rejected as against applicant No. 2- Yohan Ardeshir Irani @ Mubarakhi.

9. The application is accordingly disposed of.

10. It is made clear that the observations made herein are *prima facie*, only for the purpose of deciding this application.

11. In view of the above, the application for intervention being Criminal Application No. 356 of 2017 also stands disposed of.
12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.