IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.799 OF 2017
WITH
CRIMINAL APPLICATION NO.432 OF 2017

1. Buchepale Jagdish Sarma
2. Shobha Jagdish Sarma ... Applicants
both R/o.4, Shangrila, Kadeshwari Mandir
Marg, Bandra (W), Mumbai-400 050.
versus
The State of Maharashtra ... Respondent
(through EOW, General Cheating-1,
Crime Branch, CID, Mumbai).

Mr.Satish Maneshinde i/by Snehal Khairnar for Applicants.
Mr.M.S.Mohite i/by V.S.Bhanushali for Intervenor.
Mr.Ajay Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 15th June 2017

PC :

1. The Applicants are apprehending arrest in connection with CR No.102 of 2017 registered with Santacruz Police Station, Mumbai for offence under Sections 409, 420 and 120-B of Indian Penal Code. The investigation is conducted by Economic Offences Wing, CBCID, Mumbai vide CR No.28 of 2017.

2. The prosecution case is that first information report (`FIR') is lodged by one Ankit Murari Munim. It was alleged that he was

closely associated with Late Sheila Punjabi and her two brothers namely Mohan Hassanand Punjabi and Ashok Hassanand Punjabi. They were residing at Plot No.D/27, Survey No.G-415/C, Santosh Kutir, Sarojini Road, Santacruz (West), Mumbai. All the three members of said Punjabi family were unmarried and had no survivors or heirs whatsoever. On 9th March 2010, Mohan Punjabi and on 30th August 2010 the other brother Ashok Punjabi, the brothers of Sheila Punjabi, expired. Some time in November-2010, Sheila Punjabi informed the first informant that she had prepared her will and by said will bequeathed all her estate, property and assets for charitable/philanthropic purposes. The first informant further alleged that said Sheila Punjabi requested him that although she has appointed Buchepale Jagdish Sarma and Shobha Jagdish Sarma i.e. Applicant nos.1 and 2 as executors of the said will, the first informant should observe that the will has been executed properly by the Applicants-accused. Sheila Punjabi expired on 6th October 2013. The first informant after making certain inquiries learnt that the will of Sheila Punjabi dated 12th October 2010 was registered with the office of Joint Sub Registrar, Andheri on 6th January 2011 and it was further learnt that a probate was granted in favour of Applicant no.2 by High Court under testamentary jurisdiction. It is further alleged that as per the probated will, the estate, property and assets of deceased Sheila Punjab ought to have been used only for charitable/philanthropic purposes. In spite of passage of about two and a half years from the death of deceased Sheila Punjabi and one and a half years after the grant of probate, `Santosh Kutir' bungalow is fraudulently and dishonestly occupied and used as residence by Applicant nos.1 and 2. It is further alleged that Applicant nos.1 and 2 had applied to the office of City Survey for transfer of `Santosh Kutir' of deceased Sheila Punjabi in their name as owners. Although copy of probate was annexed to the said application, the fact that Applicants have been directed to use the said property for charitable/philanthropic purposes, was fraudulently and dishonestly suppressed by the Applicants. It was further alleged that in the application, the Applicants have dishonestly prayed that as per probate, the property should be transferred in the name of Applicant nos.1 and 2 as owners. The complainant learnt that the Applicants are using the amounts of deceased Sheila Punjabi lying in the bank accounts as well as fixed deposits, for their personal use and benefit, which is contrary to the will and probate of the deceased Sheila Punjabi. As per probate, the Applicants were under legal obligation to file a report about disposal of property and credits of deceased Sheila Punjabi, which they have deliberately and dishonestly neglected to do, thus making their dishonest intentions further clear. The mala fide and dishonest acts of the Applicants-accused constitute offence of breach of trust, cheating and forgery. It is further alleged that the complainant came to know that the property viz `Santosh Kutir' bungalow was sold by the Applicants-accused to Supreme Mega Constructions LLP by accepting a consideration of Rs.39.30 crores. The document in the nature of indenture of conveyance was executed between Supreme Mega Constructions LLP and the Applicants on 31st May 2016. Mr.Ramesh Bijlani had signed the said document as purchaser and the Applicants had signed the said conveyance deed as sellers of the said property. In the conveyance deed, it was provided that after construction of the building on the said plot of land, a premises be provided to the

Applicants on 6th and 7th floors admeasuring 3,712 sq.ft. having carpet area of 2,088 sq.ft. It was, therefore, alleged that the Applicants had usurped the property belonging to deceased Sheila Punjabi. A sum of Rs.4,25,70,000/- in respect to the said transaction was transferred into the account of Sheila Punjabi in Central Bank of India. The said amount was thereafter transferred into account of Accounts. The FIR was lodged with Santacruz Police Station on 2nd March 2017 and investigation was thereafter conducted by Economic Offences Wing.

3. Learned advocate for the Applicants has submitted that the complaint is being filed with vested interest. He submitted that the Applicants have been falsely implicated in the present crime. It is submitted that Sheila Punjab had made and executed her will dated 12th October 2010, which was duly registered with the Sub Registrar of Assurances. As per said will, Sheila Punjabi had appointed the Applicants as the only executors of her estate including the property. It is further stated that Applicant no.2 was working in State Bank of India and came in contact with the deceased Sheila Punjabi due to her work. As the friendship and relationship between Applicant no.2 and the deceased has strengthened, Applicant no.2 started residing with deceased Sheila Punjabi in bungalow `Santosh Kutir'. Since Applicant no.1 helped Sheila Punjabi in her day to day purchases and Applicant no.2 lived, cooked and looked after Sheila Punjabi along with managing her job, on humanitarian grounds, since said Sheila Punjabi was living alone in the said bungalow. Since the death of Sheila Punjabi as aforesaid, the Applicants have been in continuous, uninterrupted and exclusive possession of `Santosh Kutir'. Learned

advocate for the Applicants further submitted that the Applicant no.2 had filed testamentary petition before this Court being Testamentary Petition No.322 of 2014 and had thereby applied for a probate of the said will. In the schedule to the petition for probate, the property is reflected as one of the assets of Sheila Punjabi. The probate of the said will was granted by Bombay High Court on 8th July 2014 in favour of Applicant no.2.

4. Learned advocate for Applicant submitted that till 22nd April 2013, the property register card in respect of said land reflected the name of Parmeshwari Punjabi as the sole holder thereof. By and under entry on the property register card dated 27th April 2013, the name of Parmeshwari Punjabi was deleted and names of Sheila Punjabi, Mohan Punjabi, Ashok Punjabi and Subhash were inserted therein as holders of said land by succession. Applicant no.2, therefore, filed requisite applications for deleting the names of Sheila Punjabi, Mohan Punjabi, Ashok Punjabi and Subhash as the holders of said land from property register card and inclusion of names of Applicant no.2 as the holder of said land. Pursuant to the said application, Applicant no.2 was informed by officer of City Survey Office that name of Sheila Punjabi would be deleted on the basis of probate dated 8th September 2014 and name of Applicant no.2 would be inserted in place of deceased Sheila Punjabi as executors of her estate. However, names of Mohan Punjabi, Ashok Punjabi and Subhash would not be deleted, since there are no letters of administration granted by Court of competent jurisdiction in favour of Applicant no.2 pursuant to their death.

5. It is further submitted that one Milind Sabnis had filed an application bearing Miscellaneous Application No.96 of 2015 in Testamentary Petition No.322 of 2015 before this Court challenging the probate granted in favour of Applicant no.2. By order dated 8th July 2016, this Court had dismissed the said application preferred by Mr.Sabnis. He had also filed an appeal before the Superintendent of Land Records, Mumbai Suburban District challenging the order of City Survey Officer wherein the name of Applicant no.2 was inserted as the executor of deceased Sheila Punjabi. By order dated 30th November 2016, the Superintendent of Land Records dismissed the said application preferred by Mr.Sabnis and thereby upheld the decision of City Survey Officer in favour of Applicant no.2. It is further submitted that some where in July-2015, they were introduced to accused no.3 through one broker namely Mahesh Raney regarding sale of property viz. Sntosh Kutir. The Applicants thereafter in August-2015 approached accused no.3 for discussing the purchase and development of said property. Accused no.3 after going through the documents of the property including the probated will and all the relevant documents, decided to execute an indenture of conveyance with Applicants for the said property. By way of indenture of conveyance dated 31st May 2016, Applicant nos.1 and 2 conveyed and sold Santosh Kutir to accused no.3 for a total consideration of Rs.56,58,93,000/- inclusive of both monetary and area consideration against its market value of Rs.29,61,66,000/-. As per terms, accused no.3 had paid Rs.4,25,70,000/- to the Applicants. The Applicants also executed power of attorney in favour of accused no.3 on 31st May 2016.

6. Learned advocate for the Applicants further submitted that on 18th March 2016, the first informant filed a complaint against Applicants with Santacruz Police Station for the offences under Sections 405, 406, 409l, 417, 418, 420, 465, 467, 471 read with Section 34 of Indian Penal Code. It is submitted that after filing said complaint, Santacruz Police Station carried out detailed investigation in the complaint filed by the first informant. The Santacruz Police Station during the investigation recorded statements of the first informant and Applicant no.1. After the investigation of said complaint and collection of documents and interrogating Applicant no.1, Santacruz Police Station had closed the said investigation without taking any action against the Applicants. The said complaint was filed on record and no FIR was registered. The first informant thereafter on 12th May 2016 filed a private complaint being No.88/SW/2016 before the learned Magistrate, 71st Court, Bandra, Mumbai against Applicants for offences under Sections 406, 420 and 471 of Indian Penal Code. It is submitted that it appeared from the record that learned Magistrate during the course of hearing of said complaint, had directed the complainant to show that the accused have not submitted the details of disposal of property of the deceased to High Court. On 8th September 2016, the complainant filed an application in testamentary petition before the High Court for procuring the certified copy of testamentary petition filed by Applicant no.2 along with its annexures. Applicant no.2 had filed her affidavit-in-reply to the said application preferred by the complainant objecting for certified copies to him. On 15th December 2016, the Court was pleased to dismiss the said application preferred

by the complainant. The complainant thereafter withdrew the private complaint filed before learned Magistrate on 9th March 2017. Thereafter the complainant had again filed present complaint which was investigated by Economic Offences Wing.

7. It is further submitted by learned advocate for the Applicants that it can be seen from the aforesaid facts that the first informant had failed to obtain any relief from Santacruz Police Station at the earlier point of time and from the Court where he had filed private complaint, which was withdrawn subsequently. Due to said frustration coupled with his mala fide intentions, the complainant approached Economic Offences Wing. It is submitted that on perusal of documents filed by first informant before Santacruz Police Station and before the Magistrate, it can be seen that all his complaints directed towards Applicants, are false and fictitious. It is submitted that during pendency of the proceedings before the Magistrate, the first informant had approached the Crime Branch for registration of FIR against the Applicants and accused no.3, with similar allegations as raised by him before learned Magistrate. On 27th January 2017 and 1st February 2017, notices were issue to Applicant no.1 directing him to remain present at their office for investigation. The Applicant no.1 had attended the investigating officer and co-operated with the investigation.

8. It is submitted that the deed of conveyance executed by the Applicants with Supreme Mega Constructions LLP has been signed by the Applicants in their capacity as executors/administrator of the estate of Sheila Punjabi and her probated will. The amount received

towards said transaction was credited into accounts of estate of Sheila Punjabi at Central Bank of India. Thereafter accurate accounts and reconciliation have been done of the transactions pertaining to the estate of Sheila Punjabi. No personal expenses have been made using the funds from the said accounts. It is further submitted that the bank balance at the time of Sheila Punjabi's death was Rs.60,55,726/- in Central Bank of India and Rs.57,37,408=95 Ps. in Bank of India totalling to Rs.1,17,93,134-95 Ps. This amount was credited by the banks to Applicant's no.2's account since she was the nominee in those accounts. The amount was used for expenses, maintenance of the estate and various taxes of Sheila Punjabi and also for charitable purposes in honour of her will. The Applicants have diligently dealt with the entire property of Sheila Punjabi as per her will. It is further submitted that on perusal of the entire records of property it seems that the first informant had no locus standi in the present matter and had dragged the Applicants in the criminal proceedings as a lever for pressurizing the settlement of civil disputes to his satisfaction. It is also pointed out that accused no.3 had preferred Criminal Writ Petition No.1123 of 2017 for quashing present FIR before this Court. On 16th March 2017, the Court has granted ad-interim reliefs to the said accused by directing the Respondents therein not to file the charge sheet against said accused without the leave of the Court. It is submitted that the allegation in the complaint taken at its face value, do not make out any offence as alleged by the complainant. It is further submitted that the complainant has a mala fide intention to pressurize the Applicants to submit to his demands. He further submitted that the matter pertains to documents and custodial interrogation of the Applicants is not necessary. It is submitted that the investigation was carried out by Santacruz Police Station, the Applicants had co-operated with the investigation and the Police at that point of time did not find it necessary to take cognizance of the complaint filed by the first informant and the proceedings were closed. It is, therefore, submitted that the Applicants may be granted anticipatory bail in case of their arrest.

9. Learned APP vehemently opposed the application. It is submitted that the Applicants have committed a serious crime of misappropriation of the funds and their custodial interrogation is necessary. It is submitted that the Applicants had violated the conditions of will and have misused the funds of Sheila Punjabi. The Applicants while entering into agreement with Supreme Mega Constructions LLP of sale of Santosh Kutir claimed flats on 6th and 7th floors in the proposed building admeasuring 3,712 sq.fts. from co-accused Mr.Bijlani. They were not supposed to claim the property for their personal use by alienating the trust property. It is further submitted that the Applicants have transferred trust money in favour of their son who stays at abroad and also in their personal accounts as well as in the accounts of their relatives. It is submitted that the Applicants are holding 28 accounts with six different banks. It is submitted that during the course of investigation, the investigating machinery has collected sufficient evidence which shows complicity of the Applicants in commission of said crime. It is revealed that the Applicants had not acted as per terms and conditions of the will. It is submitted that the main object of the will was to utilize the funds for charitable and philanthropic purposes, but it appears from the

investigation that the Applicants had used the funds for their personal benefits. It is further submitted that the Applicants had also purchased the property at Kankavali from the trust funds. It was, therefore, submitted that custodial interrogation of the Applicants is necessary.

10. Learned advocate appearing for first informant/intervenor had submitted that the Applicants were only executors and were not given any ownership rights in respect of subject bungalow. It is stated that the will and probate specifically stated that the said bungalow will be used for charitable and philanthropic purposes in the name of parents of Sheila Punjabi, late Parmeshwari Punjabi and Hassanand Punjabi. It is further stated that in case the bungalow is sold or leased out, the proceeds will be utilized in the name of parents of deceased for charitable and philanthropic purposes. It is apparent that the Applicants were not authorized to take any share out of said proceeds. It is submitted that though the consideration towards sale of said bungalow was credited in the account of estate of Sheila Punjabi, subsequently by fraudulent and clandestine manner, a part of the sale proceeds was transferred to the benefit of Applicants. It is submitted that trail of the money which is a matter of investigation, would show to whom the monies have been passed on and to whose benefits, however, certainly the monies have not been utilized for charitable and philanthropic purposes in the name of parents of deceased Sheila Punjabi. It is further submitted that in the indenture of conveyance with accused no.3, it is mentioned that the Applicants were given free of cost duly constructed duplex residential flats admeasuring approximately 3,712 sq. ft. carpet area

with exclusive right to use the same, in the building to be constructed on the land beneathh Santosh Kutir. It is, therefore, submitted that it clearly shows that the property is transferred and a right is created in favour of Applicants. Though under the will and probate the Applicants were not entitled to have any share in the said property, however, fraudulently and in clandestine manner, by showing lesser value of the bungalow, the Applicants had committed breach of trust in respect of the estate of the deceased Sheila Punjabi.

11. Learned advocate for the intervenor further submitted that in respect of earlier complaint which was lodged with Santacruz Police Station, only inquiry was conducted and it cannot be said that investigation was conducted and the report was submitted that no offence is made out against the Applicants. He submitted that since no feed back was given by Santacruz Police Station, he had filed a complaint to Economic Offences Wing, Crime Branch. Therefore, there is no question of any mala fide intention on the part of complainant. He submitted that the private complaint which was filed before the learned Magistrate, was withdrawn since the FIR was already registered and investigation had proceeded. It is submitted that the private complaint was filed after the complaint was made to Santacruz Police Station and to Economic Offences Wing, which were pending for consideration. There is no question of not disclosing the said fact in the complaint. In fact, private complaint was filed only when the Police did not take prompt action in the matter. It is submitted that in any case, during the course of investigation, in respect to the FIR, the Police have collected ample evidence which shows involvement of the Applicants in commission of crime and,

therefore, they are not entitled for the relief under Section 438 of Code of Criminal Procedure, 1973.

12. I have perused the FIR and other documents on record. It can be seen that late Sheila Punjabi had died leaving behind no heir or successor. She has executed a will dated 12th October 2010 which has been registered on 6th January 2011 and appointed the Applicants as executors of the said will. The Applicants had obtained probate in the name of Applicant no.2 from High Court in its testamentary jurisdiction. As per will, the estate, property and assets of the deceased Sheila Punjabi has to be used only for charitable/ philanthropic purposes in the name of her parents. It is an admitted position that the Applicants are residing in the bungalow namely Santosh Kutir, which was owned by deceased Sheila Punjabi. The Applicants had entered into an agreement of indenture of conveyance with Supreme Mega Constructions LLP as executors of the estate of Sheila Punjabi. The accused no.3 executed an agreement with Applicants as a partner of Supreme Mega Constructions LLP for consideration. The Applicants received token money as first instalment of Rs.4,25,70,000/-. So also purchaser had agreed by the said agreement to provide flats on 6th and 7th floors of the proposed building admeasuring about 3,712 sq.ft. carpet area to the Applicants in addition to the consideration amount. This is apparently in breach of the conditions of will executed by Sheila Punjabi. It was also revealed during the investigation that late Sheila Punjabi was having 14 fixed deposit receipts of Central Bank of India, Santacruz Branch. The Applicants had received Rs.60,55,726/- as interest on said fixed deposit receipts. Sheila

Punjabi was also having 15 fixed deposit receipts of Bank of India, Santacruz Branch. The Applicants received Rs.57,37,409/- as interest on the said fixed deposit receipts. The Applicants have thereby received Rs.1,17,93,135/-. During the course of investigation it was further revealed that out of Rs.60,55,726/-, the Applicants diverted Rs.60 lakhs from the aforesaid account to their joint savings account with Central Bank of India, Turner Road Branch. The Applicant no.2 from the said joint savings account diverted to other personal savings account the said amount on 6th November 2013. So also from that amount, she had diverted Rs.6,89,523/- to her another savings account maintained with State Bank of India on 19th November 2013 and Rs.3 lakh were utilized for satisfaction of her loan outstanding on over draft account of State Bank of India on 19th November 2013. The Applicant no.2 diverted Rs.50 lakh to her another savings account with the same bank on 6th November 2013. The said amount has been again diverted by her to another savings account with interest accrued thereon. During the course of investigation it also transpired that out of interest amount of Rs.57,37,409/-, the Applicants initially diverted the said amount to the account of Applicant no.1 and from his account Rs.58 lakh to their joint savings account with State Bank of India, Turner Road Branch on 30th October 2013. Out of that, Rs.8 lakh were diverted to the personal savingsaccount of Applicant no.2 maintained with same bank on 30th October 2013 and Rs.50 lakh were diverted to her another saving account with same bank on 30th OOctober2013. The said amount was re-diverted to another savings account alongwith interest thereon. It was also revealed from the course of investigation that out of the diverted funds, an amount of

Rs.15,43,934/- was diverted to savings account of Applicants' son who is residing abroad and amount of Rs.30,93,587/- is also diverted to the abroad accounts. The said accounts have been frozen by the investigating agency. It is also revealed that the Applicants are having three lockers in State Bank of India. It is also revealed that the Applicants are having 28 bank accounts with SBI, Branches at Carter Road, Pali Market and Turner Road etc.. The correspondence is made by investigating machinery with the aforesaid banks to collect the statements of accounts and investigation is in progress. Prima facie, there is sufficient evidence to connect the Applicants with the alleged crime which is required to be carried out by custodial interrogation. The Applicants are, therefore, not entitled for the relief under Section 438 of Code of Criminal Procedure, 1973.

13. I am not inclined to allow this application. Hence, I pass following order :

ORDER

(i) Anticipatory Bail Application No.799 of 2017 is rejected;

(ii) Criminal Application No.432 of 2017 stands disposed of.

(PRAKASH D. NAIK, J.)

MST