**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.1749 OF 2016**

**1) MICHAEL FRANCIS SALDANHA )**
**2) MARK SALDANHA )...APPLICANTS**

**V/s.**

**THE STATE OF MAHARASHTRA )...RESPONDENT**

Mr.A.P.Mundargi, Senior Counsel, i/b. Mr.Manoj S. Mohite, Advocate for the Applicant.

Mr.A.R.Kapadnis, APP for the Respondent - State.

**CORAM : A. M. BADAR, J.**

**DATE : 4th DECEMBER 2017**

**P.C. :**

1 Both applicants are accused in Crime No.299 of 2016 registered with Police station Azad Maidan, Mumbai, for offences punishable under Sections 419, 420, 465, 467, 471, 507 and 120B of the Indian Penal Code (IPC), at the instance of Nayan Bhagdev, Associate Vice President of Hongkong Shanghai Bank Corporation Bank (hereinafter referred to as HSBC Bank for the sake of brevity).

2 The learned senior counsel appearing for both applicants tendered a photocopy of Probate of Will No.1005 of 2016 along with Codicil. It is taken on record and marked as Exhibit "X" for the purpose of identification.

3 Heard the learned senior counsel appearing for both applicants. He vehemently argued that deceased Patrick was the eldest brother of both applicants. Applicant no.1 has no issue and his wife has passed away. Applicant no.2 is unmarried. Eldest brother - deceased Patrick – was unmarried and was not having any legal heir. Therefore, according to the learned senior counsel, even otherwise, without any testamentary disposition, the property owned by deceased Patrick was to devolve upon both applicants. Therefore, there was no reason for both applicants to indulge in fabrication of documents in order to get the amount from bank accounts of deceased Patrick. The learned senior counsel further argued that in all probability, the accountant of the deceased has indulged in transacting with the bank on behalf of deceased Patrick, and that is how, amount appears to have been

withdrawn from the bank accounts of deceased Patrick after his death. The learned senior counsel further argued that both applicants were not even staying at Mumbai, at the relevant time, and therefore, the question of transacting or operating bank accounts of deceased Patrick by both of them does not arise. The learned senior counsel further argued that nobody else was entitled to the property of deceased Patrick as he died without any legal heir except both applicants, who being his brothers, are his only legal heirs.

4 The learned APP opposed the application by contending that after death of Patrick, present applicants/accused have operated bank accounts of the deceased Patrick and got the amount transferred to their accounts. The learned APP further argued that custodial interrogation of both applicants/accused is necessary as the Investigator wants to ascertain as to who had prepared forged Power of Attorney allegedly executed by deceased Patrick.

5 I have carefully considered the rival submissions and also perused the record made available. Undisputedly, both applicants herein are younger brothers of deceased Patrick, who died on 18th February 2016.

6 It is seen that Patrick had executed his last Will and had appointed both applicants to be the executors of his Will. The Probate of the Will granted by this court shows that except a very meager share from his property, which goes to personal staff of deceased Patrick including co-accused Jagdamba Prasad and Kuresh Morbiwala, rest of the property devolved on both applicants in equal shares i.e. 50:50 percentage. This makes it clear that both applicants are entitled to the entire property of their deceased brother Patrick leaving 7% of his estate for his personal staff.

7 On this backdrop, it is in the First Information Report (FIR) lodged by Nayan Bhagdev of HSBC bank that deceased Patrick, who was holding some accounts in the said bank, the

Fraud Investigation Team of HSBC bank noticed some suspicious financial transactions in the accounts of Patrick maintained by the said bank. It was noted that from 15th May 2016 to 22nd June 2016, many shares from the accounts of Patrick were transferred to his Demat account as well as Demat account of his Company named India Infoline Company. The HSBC bank also noted that a Power of Attorney of deceased Patrick was furnished to the bank on 13th April 2016. On 7th April 2016, the stamp duty for executing that Power of Attorney was found to be paid and it was allegedly executed on 12th April 2016. The Investigation Team of the bank procured information about Patrick from the net and found him to have died on 18th February 2016 itself. On the basis of the so called Power of Attorney, the contents of the two lockers were allegedly taken away by applicant no.1 and the lockers were surrendered to the bank. It was found by the bank that during the period from 18th February 2016 to 18th July 2016, there were 79 credit and 182 debit transactions from the bank accounts of deceased Patrick. The transaction was for the amount of Rs.2,30,41,825/-. The First Informant concluded that the account holder Patrick is cheated by an amount of Rs.2,29,95,000/-. It is alleged that an amount of Rs.95,45,000/- went to the bank account of applicant no.1 whereas an amount of Rs.94,25,000/- went to the bank account of applicant no.2. Some amount went to the share of co-accused Kuresh Morbiwala as well as co-accused Jagdamba Prasad. Thus, Kuresh Morbiwala as well as Jagdamba are granted 1% and 2% share in the estate of the deceased by the testamentary disposition, as seen from the Probate at Exhibit “X”.

8 Careful consideration of the FIR does show that it is the case of prosecution that the account holder is cheated by unauthorized transactions after death of the customer of the bank and consequently the bank is also cheated by the said transactions. The position, which cannot be disputed, makes it clear that the deceased had executed his last Will bequeathing the entire property except 7% thereof, to both applicants. 3% of the property was bequeathed by deceased Patrick to co-accused Kuresh Morbiwala and Jagdamba Prasad. Thus, both applicants, prima facie, had no reason to indulge in unauthorized transaction

with the bank, when to their knowledge, they were entitled to the entire property of their deceased eldest brother. This court has probated the last Will with Codicil executed by deceased Patrick in Testamentary Petition No.2235 of 2016 on 28th September 2017. In this view of the matter, I am of the opinion that custoidal interrogation of both applicants is not warranted and the interest of the Investigator can be protected by directing them to attend the Investigator. Therefore the order :

**ORDER**

i) The application is allowed.

ii) In the event of arrest in Crime No.299 of 2016 registered with Police station Azad Maidan, Mumbai, for offences punishable under Sections 419, 420, 465, 467, 471, 507 and 120B of the IPC, applicants/accused shall be released on bail on their executing P.R.Bond in the sum of Rs.15,000/-, and on furnishing surety in like amount, by each of them.

iii) As a condition of this order, applicant/accused no.1 shall attend the concerned Police Station on 5th December 2017, in between 11.00 a.m. and 1.00 p.m., and he should co-operate the Investigator in the investigation of the crime.

iv) As it is reported that applicant no.2 because of his old age is hospitalized, he should attend the Investigating Officer, after his discharge from the hospital, or on 28th December 2017, whichever is earlier.

v) Both applicants/accused are directed to co-operate the investigation.

vi) They should also attend the Investigating Officer, as and when directed by a written notice, only for the purpose of investigation.

vii) As a condition of this order, applicants/accused should furnish their residential addresses as well as cell phone numbers to the Investigating Officer and they should inform the change, if any, in their residential addresses or cell phone numbers, to the Investigating Officer.

viii) Both applicants/accused should not leave India without permission of this court.

ix) The application is disposed of.

**(A. M. BADAR, J.)**