

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

**CRI. ANTICIPATORY BAIL APPLICATION NO.1680 OF 2018
WITH
CRIMINAL APPLICATION NO.1130 OF 2018**

Vimla Mohanlal Sharma Alias
Vimla Dubey

.. Petitioner

Vs.

State of Maharashtra

.. Respondent

.....

Mr.Ashok Mishra a/w. Mithi Murkudkar i/b. M/s.Solicis Lex,
Advocate for the Applicant.

Ms.A.A. Takalkar, APP for Respondent – State.

Mr.Mukesh Pandey i/b. M/s.Manas & Co., Advocate for the
Intervener.

Mr.Abhijit Thorat, API, Jogeshwari Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : SEPTEMBER 21, 2018.

P.C. :

The applicant is apprehending arrest in connection with ME C.R. No.1 of 2018, dated 19th January, 2018, registered with Jogeshwari Police Station, Mumbai, for offence punishable under Sections 354, 420, 467, 468, 471, 452 read with 34 of Indian Penal Code (“IPC”, for short).

2 Criminal Application No.1130 of 2018, is preferred by the original complainant seeking intervention in the application for Anticipatory Bail. The said application is allowed and the intervener is permitted to intervene in the application for Anticipatory Bail.

3 The prosecution case in brief is that the complainant's father late Mohanlal Sharma and her mother had four issues out of the marriage. The Complainant, her brother Mr.Mahendra Sharma, her sister Mrs.Kamlesh Sharma and Mrs. Madhuri Rai. After 1968 the complainant and her sister resided with her grandmother at native place in Uttar Pradesh. Whereas, her father and mother had come to Mumbai in search of work. The complainant's sister Madhuri Rai was also residing with the parents in Mumbai. The complainant married to Ramakant Sharma in 1976. Her husband passed away in 2007. complainant's sister was married in 1980. After her marriage she started residing at her matrimonial home in Sultanpur, Uttar Pradesh. Complainant's brother is also married in 1981 and he is residing with his wife at Mumbai. The sister of the complainant Madhuri got married to one Sanjay Rai in 1989 and she is residing at Jodhpur, Uttar Pradesh. Daughter of Madhuri,

Ms.Moulshri was residing along with the parents of the complainant. The mother of complainant passed away on 4th January, 2006.. The complainant's father was not keeping well and the maternal uncle of the complainant was asked to look out for a maid to look after her father. Maid servant, who was a female divorce was introduced to the father of the complainant. Her name was Rachana Dubey. The complainant kept her as a house-maid for taking care of her father. The residential premises where her father was residing underwent re-development process in 2010. In 2013 the complainant's father was residing along with Moulshri and the maid servant Rachana Dubey at Satellite Housing Society, Subhash Nagar, Jogeshwari, (East). After the redevelopment was concluded the complainant's father was allotted a flat in the said building. In June, 2016 the health of complainant's father deteriorated. The complainant and her niece Moulshri took her father to his native at Sultanpur, Uttar Pradesh. The complainant's sister also helped the complainant and her father to board the train. On 9th February, 2017, the father of the complainant passed away in Labuar. In June, 2017 after the death of her father, the complainant returned to Mumbai along with her sister Madhuri Roy and nephew Ajit Sharma as well as her niece Moushri Roy. When the complainant went to

the residential premises along with her sister, she found that the lock of the residential premises was changed. When the complainant rang the door bell, the applicant-accused opened the door. When she tried to enter in the premises, she was stopped by the applicant-accused and she claimed that she is married to complainant's father in the year 2008 and she is his second wife. The complainant along with her sister, niece and nephew were shocked to hear that. The complainant was not aware of her father's second marriage nor was she told by any of her relatives regarding such marriage. Two unknown persons appeared from the house and pushed the complainant. They touched the complainant and Mrs.Madhuri inappropriately, They grabbed the complainant and Mrs.Madhuri by their hands and pushed them forcefully on their chest and resultantly Madhuri fell on the floor and they were humiliated by unknown persons. The police arrived at the place of incident. They were taken to the police station. They were advised by the police that the dispute is of civil nature and they should take appropriate remedy from the Civil Court. The complainant sought copy of marriage application under RTI Nagar Public Nigam, Jabalpur, Madhya Pradesh. It was revealed that registration of marriage was done on 20th January, 2017. complainant's father had allegedly signed for registration on

same day. It is alleged that her father was not in a position to visit Jabalpur to register their marriage, and therefore, his signature was forged by the accused. The father of the complainant was bed-ridden and he ought not have remained present for registration at Jabalpur. The F.I.R. was registered on 19th January, 2018.

4 The applicant's contention is that the F.I.R is based on false allegations made by the complainant with a view to oust the applicant from the share of the applicant of inheritance of her late husband Mr.Mohanlal Sharma and to take possession of disputed residential premises. It is submitted that the applicant is a widow. Her first husband had expired on 2nd August 1996. Mr.Mohanlal was a widower from his first marriage as his first wife had expired on 4th January, 2006. Mohanlal was desirous of marrying again and hence he requested his relatives to find a suitable proposal for him. The maternal uncle of the complainant and other relatives then arranged the alliance of applicant to Shri Mohanlal. They were married as per vedic rites and rituals on 6th July, 2008 at Kedar Shastri Shakti Stree Sadan (Mandir) Chungi Chowki, Lalmati Jabalpur, Madhya Pradesh in the presence of various relatives, including the complainant and her close family

members. The applicant has relied upon the photographs of wedding ceremony dated 6th July, 2008. There was a small function at the native place in Lambuva, District Sultanpur which was attended by relatives. The photographs of the said function are also annexed to the application. Mr.Mohanlal was a well do to middle class person who owned several properties, including the disputed flat at Jogeshwari and agricultural land at his native place in Sultanpur, Uttar Pradesh. Late Mohanlal had four issues. Upon the demise of Mohanlal on 9th February, 2017, his heirs never mourned his death and left no stone unturned to assert their rights over inheritance of Mohanlal's estate. The heirs made an application for obtaining death certificate from the concerned department at Uttar Pradesh on 13th February, 2017, and, utilised the same to insert their names in place of the deceased on various documents of ownership, etc. When the applicant came to know about this action of the heirs of late Mohanlal, she filed Testamentary Petition No.2002 of 2017 on 29th June, 2017, in the Testamentary and Intestate jurisdiction of the High Court of Bombay for Letter of Administration of the estate of her late husband Mohanlal Sharma. The heirs of late Mohanlal Sharma then filed a Civil Suit No.3105 of 2017 in the City Civil Court at Dindhoshi against the applicant for declaration

and recovery of possession of disputed residential premises. The other heirs have tried to insert their names in the Mutation Entries of agricultural lands situated in the native place at Taluka Lambhua, District Sulatanpur, Uttar Pradesh. The applicant had also preferred an application to Tahsildar, Lambuva, Sultanpur, Uttar Pradesh for a stay on change in the Mutation Entries. It is submitted that the complainant and others have tried their level best to evict the applicant from the disputed residential property and hence false and frivolous first information report has been lodged against the applicant. The complainant and others were aware of the marriage ceremony solemnized between late Mohanlal and the applicant and they were present during the said ceremony. The marriage was attended by several persons which is evident from the photographs. The complainant has conveniently suppressed the marriage of her late father with applicant and had portrayed the applicant as maid-servant. It is submitted that matter relates to documents and custodial interrogation of the applicant is not necessary.

5 The application was opposed by the prosecution as well as by the Intervenor/complainant. It is submitted that the applicant has forged and fabricated the document viz. marriage

certificate. The applicant is falsely claiming to be wife of late Mohanlal with a view to grab his property. She was brought as a maid servant to look after ailing father of the complainant and she has taken undue advantage of the situation and has tried to claim the properties of late Mohanlal Sharma. During the course of investigation, statements of various witnesses are recorded. The statement of doctor who was treating Mohanlal is also recorded. He has stated that Mohanlal was admitted in the hospital from 7th December, 2016 to 8th December, 2016, as indoor patient. The doctor had opined that considering health condition of Mohanlal it is improbable that he could travel on 20th January, 2018 from Uttar Pradesh to Jabalpur. There is another witness who has stated that since December, 2016 Mohanlal did not go out of the native place as his health had deteriorated. It is further submitted that the investigating officer has found that affidavits filed along with marriage registration form purportedly attested by Notary were not affirmed before the Notary. So also the Notary has stated that he did not affix any stamp or put his signature on the affidavits filed along with marriage registration form at Jabalpur. It is submitted that considering these aspects, thorough investigation in the matter is required. Hence it is prayed that the application be rejected.

6 I have gone through the documents on record. The F.I.R. was lodged on 19th January, 2018. The F.I.R. basically relates to the incident of June, 2017 wherein the complainant and others had visited the premises at Soham Apartment, Flat No.205, Harvdevi Co-op. Housing Society at Jogeshwari. It is alleged that the applicant was found to be occupying the said premises and she was accompanied by two other unknown persons who outraged the modesty of the complainant and her sister. The contention of the complainant is that the applicant was brought as a maid-servant. The father of the complainant was a widower. He passed away at on 9th February, 2017 at his native place in Lambuva, Sultanpur, Uttar Pradesh. Apparently, police did not take cognizance of their complaint and they were advised that the dispute is of civil nature and they shall take recourse to appropriate proceedings. The complainant filed a private complaint and in pursuance to the directions of the Court M.E.C.R.No.1 of 2017 was registered. The applicant has initiated testamentary proceedings on 29th June, 2017. The complainant and others had also filed a suit seeking appropriate declaration from the Civil Court. The F.I.R. was registered subsequently on 19th January, 2018. The applicant has placed reliance on the photographs which reflects solemnization of marriage ceremony

with late Mohanlal. It is attended by several persons. The applicant's contention is that even the complainant and others had attended the said marriage. The applicant has also initiated appropriate proceedings in respect to other properties of late Mohanlal. According to the doctor whose statement was recorded, Mohanlal was ailing and he was hospitalized on 7th December, 2016 to 8th December, 2016. Mr.Mohanlal however is alleged to have visited Jabalpur on 20th January 2017 for registration of the marriage. The said fact is being doubted by the complainant and the investigating machinery. During the course of investigation, the statements of several persons were recorded, which includes the statement of Notary and other persons. It is also apparent that all the documents are collected during the course of investigation. In the aforesaid circumstances, the custodial interrogation of the applicant is not necessary. The applicant can be granted anticipatory bail with certain directions to co-operate with the investigation.

7 Hence I pass the following order.

:: ORDER ::

- (i) Anticipatory Bail Application No.1680 of 2018,
is allowed;

- (ii) In the event of arrest of applicant in connection with M.E.C.R.No.1 of 2018, the applicant be released on bail on furnishing PR Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;
- (iii) The applicant shall report the investigating officer once in a week on every Friday between 10:00 a.m. to 12:00 noon, for a period of one month, and, thereafter, as and when called for till filing of the charge - sheet;
- (iv) The applicant shall not tamper with the evidence;
- (v) Anticipatory Bail Application No.1680 of 2018 and Criminal Application No.1130 of 2018 both stand disposed of.

(PRAKASH D. NAIK, J.)