

*Nalawade*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2104 OF 2017

Jalis M. Rais vs. State of Maharashtra

WITH

CRIMINAL APPLICATION NO.1186 OF 2017

Altaf Mohiddin Rais vs. State of Maharashtra

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Dinesh Tiwari, Swapnil Ambare, Mr. M. Dey, S.Malbhari
i/byDinesh Tiwari & Associates for the Applicant.

Mr.A.A.Palkar, APP. for the State.

Mr. Irfan Shaikh for Respondent No.2.

Mr.S.Jaybhave, API from Manor Police Station present.

CORAM : A.S.GADKARI, J.

DATE : 03rd July, 2018

P.C.

1. By an Order dated 30.11.2017 the applicant was granted interim relief and was directed to attend the Investigating Officer on stipulated dates.

2. Heard learned counsel for the applicant, the learned counsel for respondent No.2 and the learned APP. Perused the record of investigation.

3. The first information report is lodged by respondent

No.2 in furtherance of an Order passed under Section 156(3) of the Cr.P.C. by the learned Judicial Magistrate First Class Court IV, Palghar.

4. The prosecution case in brief is that, the applicant herein forged signatures of respondent No.2 namely Altaf Rais and his brother Arshad Rais and also put their thumb impressions on the power of attorney dated 2.5.2006. That in pursuance of the said forged power of attorney initially a partition deed was executed on 27.4.2007. In furtherance of the said partition deed, mutation entries have been effected on 17/5/2007 pertaining to the land in dispute. That, in furtherance of the said power of attorney and mutation entires ancestral properties belonging to the father of the applicant and respondent No.2 situated at Village Manor Taluka and District Palghar have been sold to a third person by executing registered sale deed dated 16.2.2008. In the premise, the first information report is lodged.

5. The learned counsel appearing for respondent No.2 in opposition of the application submitted that the applicant

has forged signatures of the first informant and his brother Aarshad Rais and also effected thumb impression on it. He submitted that the applicant on the basis of the said forged documents has further indulged into selling of the said ancestral property which aggravates the gravity of offence. He submitted that if the sisters would have given power of attorney to the applicant, there was no need for them to remain present on the date of execution of the documents which falsifies the claim of the applicant about the authenticity of the said power of attorney. He submitted that the original power of attorney is in possession of the applicant and till date the same is not recovered and therefore, the custodial interrogation of the applicant is necessary.

The learned APP in unequivocal terms supported the submissions of the learned counsel for the respondent No.2 and prayed for dismissal of the application.

6. Perusal of the record would indicate that before effecting the mutation entries in revenue record in pursuance of partition deed dated 27.4.2007, the

concerned Revenue Authority had issued notice to all the concerned and it appears that as per the rules framed under the Maharashtra Land Revenue Code, notice was also published in the office of the Talathi of the concerned village. The record further indicates that, the sisters of respondent No.2 who are the step sisters of the applicant have received consideration towards the sale of their share pertaining to the said immovable property by cheques and the said cheques have been realized in their own account and the said sisters have no grievance even about the execution of the said power of attorney. The record further indicates that, as per the Will of the deceased father of the applicant and respondent No.2 Mr. Altaf Rais, certain properties were transferred in the names of the sisters of the respondent No.2 and it prima facie appears that respondent No.2 and his brother Aarshad Rais were not given share in a particular property which appears to be the subject matter of the present crime. It further appears that, as the respondent No.2 and his brother Aarshad Rais did not get share in the said property to their satisfaction,

they have filed the present crime belatedly in the year 2017. The first information report mentions the names of the Advocate Smt. Shobhana Ruhi and Shri. Harakchand Shah (Notary) as the persons who helped the applicants in manufacturing the said power of attorney dated 2.5.2006. It is the allegation against the said two persons that, the said Advocate drafted the said power of attorney and Shri. Shah has notarized it under his own signature. During the course of investigation the statements of said Advocate Ms. Shobhana Ruhi and Shri. Shah have been recorded by the Investigating Officer. It is stated in the said statements that at the time of execution of the said power of attorney the identity of the executants was verified by the concerned and thereafter the said document has been notarized.

Prima facie, the statements of said Smt. Shobhana Ruhi (Advocate) and Shri. Harakchand Shah (Notary) inspires confidence in the mind of this Court to be reliable and belies the case of the first informant.

7. The record further indicates that in furtherance of the

directions issued by an Order dated 30.11.2017 the applicant has attended the Investigation Officer and has joined the process of investigation. In view thereof and in the opinion of this Court, the custodial interrogation of the applicant for further investigation of the present crime is not necessary.

8. Interim relief granted by Order dated 30.11.2017 is hereby confirmed. However, the condition to attend the Investigating Officer is waived.

9. Application is allowed in the aforesaid terms.

10. In view of the above, the Intervention Application No.1186/2017 does not survive and is accordingly disposed off.

(A.S.GADKARI, J.)