

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

CRIMINAL BAIL APPLICATION NO. 2720 OF 2019

Yusuf Mohd. Lakadawala

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. A.P. Mundargi, Sr. Advocate a/w Subir Sarkar i/b I.A. Khan,
Advocate for the Applicant in both Bail Applications.

Mr. H. J. Dedhia, APP for the state-respondent.

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CORAM : PRAKASH D. NAIK, J.

DATE : 19th December, 2019

PC :

1. The applicant is seeking bail in connection with C.R. No. 32 of 2019 registered with GBCB, CID EOW Unit-1, Mumbai for offences punishable under Sections 465, 466, 467, 468, 471, 201 r/w Sections 120 (B) of IPC and Section 82 of Registration Act 1908. The applicant was arrested on 12th April, 2019.

2. The prosecution case is that the informant Jintendra Badgujar is a Sub Registrar at Maval. On the report of the informant, offence is registered against accused persons namely Yusuf mohammad Lakadawala, Mohan Nair and others. Allegations against accused persons are that they conspired to usurp the land survey No. 104 (CTS No. 11, 11-A and 11-B) admeasuring 4 acres 38 Ghunta at

Khandala, Tal-Maval, Dist. Pune. To usurp land accused persons used registration number of documents registered at Sr. No. 1145/1949 in the offence of Sub Registrar Maval which was in respect of other transaction between different parties. Page No. 149 from the Thumb Register is torn and entry no.36 at page no.37 concerning documents no. 1145/1949 of a Photo Yadi Register is tampered with. Forged documents were prepared to show the sale of said property by Himayat Nawaj Jangbadadur of Hyderabad to M.H. Lakadawala i.e. father of accused no.1 Yusuf Lakadawala. Then in the year 1968, one Gift Deed was prepared to transfer the said property in favour of accused no.1 Yusuf Lakadawala. Then an affidavit cum deed of confirmation was prepared and registered as document no. 2729/2017 on 12th May 2017 showing confirmation of sale deed of the year 1949 by the heirs of the Himayat Nawaz Jangbadadur to complete the transfer of said property in the name of accused Yusuf Lakadawala. Hence, FIR is registered against accused persons.

3. The applicant has contended that he is suffering from various ailments and presently undergoing treatment at Criticare Hospital. The reports were called from time to time with regards to ailments and treatment given to him. The applicant has preferred separate application for bail on medical grounds viz. Bail Application No. 2051 of 2019. The present application is preferred on merits. It is

submitted that the applicant is senior citizen aged about 74 years. He is in custody from the date of arrest. Entire investigation is completed and charge sheet is filed. It is submitted that further detention of the applicant is not necessary. The entire matters relates to the documents. The co-accused Mohan Nair had approached the applicant's manger Yusuf Balwan, stating that he is in custody of titled documents i.e. Sale Deed dated 4th December, 1949 and Gift Deed dated 15th January, 1968 in respect of the said property which belongs to the applicant's father and that the applicant is rightful owner of the property. He was informed on the strength of the documents that the property was required to be transferred in the name of the applicant and there are several heirs whose no objection is required to be obtained. Since the said documents are old and current statues of the claim of aids was required to be assailant before land is transferred in the property records in the name of the applicant. Co-accused Mohan Nair undertook the exercise of getting NOC's as well as land transferred in the name of the applicant who he portrayed was only the lawful claimant. It is further contented that the Mohan Nair had represented that he would settled the mater with legal heirs of the applicant Nawab Himayat Nawaj Jangbadadur. In the aforesaid circumstances the applicant had paid an entire amount of Rs. 2 Crores to Mohan Nair. Subsequently, representations

were made by the Mohan Nair to the applicant with regards errors in Affidavit-Cum-Deed of confirmation Deed dated 12th May 2017. Mohan Nair had prepared Rectification Deeds and informed the applicant has encroached on the property is to be cleared by one Devidas Kadu. It is submitted that Mohan Nair and Yusuf Balwan are absconding. The applicant himself is a victim as well as made to part with huge amount. The offences are triable by Magistrate. It is submitted that co-accused were granted bail by the Sessions Court. Since the investigation is completed, further detention of the applicant is not necessary. Co-accused Shoukat Ghori, Vikas Dhekale and Dipak Gupta were granted Bail by order dated 23 July, 2019 and 30 July, 2019. It is submitted that the applicant is a victim of conspiracy by the co-accused. The documents in question was prepared by absconding accused. The applicant is senior citizen aged about 74 years.

4. Learned APP submitted that the offence is of serious nature. The prosecution has filed affidavit opposing grant of bail. It is submitted that the original documents were taken out by the accused from the office of Sub-Registrar. The Sale Deed dated 4th December, 1949 and Gift Deed dated 15th January, 1968 and Page No. 149 of Thumb register were to be recovered. The accused had committed the crime after deliberation. It is submitted that the applicant wanted

to purchase the land at Lonavala and Khandala. He along with his manager Yusuf Balwan contacted estate agent Shoukat Ghori, who is operating in Lonawala/Khandala area. He showed the land bearing Survey No. 104 (CTS No. 11,11-A and 11-B) to the applicant and told him that the land belongs to Mulkaraj Anand and they would take Power of Attorney from the heirs of Mulkraj Anand. The accused Vikas Sampatrao Dhekale who was working as Parirakshan Bhumapak Land Records Department. The accused had conspired and prepared fake sale deed of the year 1949 between Nawab Himay Nawaj Jung Bahadur and Mr. Mohd. Ahmed Lakadawala, father of the applicant to the effect that the aforesaid land was sold to Nawab Himay Nawaj Jung Bahadur and Mr. Mohd. Ahmed Lakadawala.

5. The accused had torned page No.149 of the Thumb Register kept in the office of Sub-Registrar, Maval, Tal Haveli, Dist. Pune on which the entry regarding original document bearing Registration No. 1145 of 1949 was taken. The name of the original party to the document was erased and the name of M.H. Lakadawal was written at the erased place. The original document was deliberately misplaced. It is submitted that by aforesaid document it was reflected that the land was sold to M.H. Lakadawala, subsequently the applicant had prepared fake Sale Deed in respect of the aforesaid land bearing Survey No. 104 to the effect that Shri. Mohd. Ahmed

Lakadawala has Gifted the same land to the applicant.

6. It is further submitted that during investigation it was revealed that the accused had conspired. Statements of witnesses have been recorded. It is apparent that from the Thumb Book of Sub-Registrar office Maval pending 1 to 200 pages in all, in which entries regarding documents bearing registration No. 590 of 1948 to 488 of 1950 were made page 149 is missing with entries regarding documents bearing registration No. 1142 of 1949 to 1151 of 1949. The details of investigation are reflected in the affidavit filed by the prosecution.

7. I have perused the document on record. The crime relates to the forgery of documents with intention to usurp the property. There is evidence against the applicant. The statement of witnesses revealed that there were frequent meetings between accused Vikas Dhekale and Dipak Gupta. The accused Mohan Nair is absconding.

8. It is also disclosed that the legal heirs of the Nawab of Hyderabad including those 21 legal heirs who had given the Power of Attorney to the wanted accused Mohan Nair were kept in dark by the accused persons including Power of attorney holder Mohan Nair regarding the execution of the aforesaid Affidavit-cum-deed of confirmation and subsequent deeds of rectifications. They were even not aware of the so called sale deed of the year 1949 and subsequent

Gift deed of the year 1968. The said facts are apparent from the typewritten statement given to the Sub-Registrar, Maval, Dist-Pune on 26.04.2018 by 1) Shri Hasan Naruddin Khan, 2) Abdul Raheman Khan and 3) Shri Mohd. Nasaruddin Khan, 3 of the 21 legal heirs who had given Power of Attorney to the applicant accused. In the said statement it is stated by the said legal heirs that they refuse to accept the confirmation deed No.MVL 27292017 dated 12-05-2017 and subsequent rectification deed document No.2875/2017 dated 24-05-2017, its text or any other documents previously executed by Shri. Mohan R. Nair on the basis of the Power of Attorney held by him. They have never given any rights to execute such documents or rights to transfer to Shri. Mohan R. Nair. It is obvious that Shri. Nayar has cheated them.

9. It is pertinent to note that the legal heirs who had given the power of attorney to the wanted accused Mohan Nair had already revoked the said power of attorney on 21.03.2018. In the said Revocation document on pg.no.5 it is mentioned that *“And whereas Principal No.1 in the General Power of Attorney expired on 28.11.2016 and Principal No.5 expired on 30.06.2016 as such can be said that the said General Power of Attorney being no. 573/IV/2014 of R.O. Hyderabad has lost its effect and force long back i.e. on the date of the death of Principal No.5 on 30-06-2016 itself. Further,*

while executing the above said General Power of Attorney it was only given to manage the schedule property etc. on behalf of the principals there and that no monetary consideration involved in between principals and General Power of Attorney Holder and in the circumstances it is felt that by the principals who are the co-owners of the property that no useful purpose will be served by keeping such registered General Power of Attorney on record and moreover there is likelihood of committing fraud by using such ineffective General Power of Attorney which is not in force....” The legal heirs published a public notice in Newspaper ‘Prabhat’ Pune on 23.05.2018 about the fraudulent execution of documents by the wanted accused in respect of land bearing survey no. 104. The wanted accused Mohan Nair has executed the Affidavit cum deed of confirmation on 12.05.2017 on the basis of invalid and ineffective Power of Attorney. The rectification deed executed vide regn. No. MVL 6922/2018 has been executed on 18.08.2018 even after revocation of the Power of Attorney by the legal heirs on 21.03.2018 and publication of Public Notice in Pune Newspaper on 23.05.2018. Thus accused Mohan Nair has misused the Power of Attorney though it was insufficient in the sense not given by all the legal heirs, and had lost its effect due to demise of 2 principal legal heirs and fraudulently executed Affidavit cum deed of confirmation in favour of the applicant/accused Yusuf

Lakadawala.

10. The accused had acted in connivance with each other. The role of the accused were granted bail can be distinguished. The applicant is the main accused. The crime is of serious nature. The accused had conspired and prepared false and fabricated documents to usurp of the property. The evidence on record disclosed the involvement of the applicant. It is noted that the applicant is in custody from the date of arrest. However, the nature of crime is serious.

11. In the aforesaid circumstances bail cannot be granted to the applicant. However, considering the fact that the offences are triabal by magistrate trail can be expedited.

12. Hence, I pass the following order.

ORDER

- i) Bail Application No. 2720 of 2019 is rejected and stands disposed of.
- ii) Trial is expedited.

(PRAKASH D. NAIK, J.)