

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

ANTICIPATORY BAIL APPLICATION NO. 1064 OF 2021

Sanjay Annarao Suryawanshi

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. S. S. Gangakhedkar, Advocate for the applicant

Mr. V. S. Badakh, APP for respondent / State

Mr. Yogesh Deshmukh, Advocate for complainant

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CORAM : PRAKASH D. NAIK, J.

DATE : 12th OCTOBER, 2021

PER COURT:

1] The applicant is apprehending arrest in CR No.262 of 2021 registered with Bhagynagar Police Station, Dist.Nanded for the offences punishable under Section 379, 404, 405 read with 34 of Indian Penal Code (for short, 'IPC'). The First Information Report (for short, 'FIR') was registered on 08.08.2021.

2] The complainant Sunil Annarao Suryawanshi is the brother of applicant. It is alleged that the complainant was residing with his parents at Nanded. The complainant's mother had expired on 08.04.2021. Thereafter, his father had expired on 19.04.2021. While the mother was ill, complainant's sister Lata Ravindra Patil had visited the house of complainant. Since the condition of mother had deteriorated, she was admitted in Nirmal Hospital at Nanded on 26.03.2021 by the complainant. The sister was also with him. The elder brother Sanjay

Suryawanshi (applicant) was at home. Before the mother of complainant was admitted to Hospital, the keys of cupboard were handed over to his sister. The elder brother (applicant) and his wife were frequently visiting the house of his parents. The complainant was residing with his parents. The health of the father also deteriorated. Father died on 19.04.2021. Sister of complainant called her son from Pune to Nanded on 22.04.2021. On the same day, they returned to Pune. While leaving house, sister was carrying several bags and the key of cupboard was handed over to the applicant. It continues to be with him. The applicant opened the cupboard on the next day and stated that the valuable articles, cash, gold, ATM Card of father, cheque book, pension book and other important documents are missing from the cupboard. Gold weighing about 25 *Tolas* was in the cupboard and the mother of complainant had disclosed before she was admitted to Hospital, that cash of about 7-8 lakhs is lying in the cupboard. Since the applicant stated that the valuables are missing from the cupboard, the complainant made inquiry with his sister, who stated that the key of the cupboard is lying with the applicant and he should inquire with him. The complainant then made inquiry about the pension account of his father. He noticed that the amount withdrawn from the account. The withdrawals are made from 25.03.2021 to 27.04.2021. The CCTV Footage shows with the applicant had withdrawn the money from the ATM. After the death of father also the amount was withdrawn. The

applicant had furnished his cell phone number to the bank. The complainant suspected that the applicant and his sister Lata Patil were involved in theft and withdrawal of amount. Private complaint was filed before the Court of the Magistrate and directions were sought and directions were issued for investigation under Section 156(3) of Cr.P.C. In pursuance to that, the FIR was registered on 08.08.2021.

3] The applicant and his sister Lata Patil preferred application for anticipatory bail before the Court of Sessions Judge, Nanded. Interim protection was granted to them by order dated 10th August, 2021 on a condition that they shall attend the police station as and when called by the police for interrogation. They shall not directly or indirectly make an inducement, threat or promise to witnesses. The application was thereafter, finally heard and by order dated 31.08.2021, the application preferred by the sister of the applicant was allowed and the applicant was refused relief under Section 438 of Code of Criminal Procedure (for short, 'Cr.P.C.').

4] Learned Counsel for the applicant submitted that the allegations in the FIR are false. The informant and the applicant are real brothers. The accused No.2 is their sister. She is permanent resident of Pune. She has been granted anticipatory bail by the Court of Sessions Court. The parents of the applicant was residing at Bhagyanagar, Nanded. The father of the applicant was lecturer in the college at Nanded. He had

retired in the year 1998. During the life time of father, the younger son Satish was creating nuisance. Father was constrained to file suit on 05.12.2017, seeking injunction against him. However, to satisfy the demands of the younger son Satish, cash was handed over to him with the part of the property from Gat No.135. The civil proceedings were compromised through mediation. The father had executed registered will deed on 20th July, 2018. The applicant was appointed as administrator/caretaker. The younger brother Satish was excluded on the ground that he was granted substantial amount and share in the property. The applicant, sister Lata and informant were held to be entitled for share in the property bearing Plot No.40 at Bhagyanagar, Nanded. It was intended by the deceased that the children excluding the younger son Satish would have equal share in the property through the will. After the death of father, the applicant performed spiritual ceremonies and withdrawn an amount of Rs.40,000/- approximately by using ATM Card in the account of father. It was expressed by his father and mother that no one should be take or require to spend money to perform it their last rituals, after their death. The informant pressurized the applicant and his sister with an intention to grab property by excluding the rights in will deed. The applicant issued notice through Advocate on 31.05.2021 to the informant calling upon him not to enter in any transaction with third person regarding the property. The applicant also published legal notice in newspaper. The applicant had

provided all possible help while his parents were alive, including medical treatment. The applicant had filed a suit seeking relief of partition against the informant. While the applicant's sister had been to the house of her father for collecting her luggage on 30th June, 2021, she was assaulted by informant. She lodged the complaint with Bhagyanagar Police Station, Nanded, which was registered as NCR No.249 of 2021 for the offence under Sections 323, 504 and 506 of IPC. The applicant addressed a communication to the Bank Manager on 12.07.2021, intimating that the account-holder had passed away by executing registered will and the balance amount in the account may be confirmed to undertake further process. The complainant then filed a private complaint and persons to the directions of the Court, FIR was registered. It is further submitted that the custodial interrogation of the applicant is not necessary.

5] Learned APP submitted that investigation is in progress. There are serious allegations against the applicant. There is evidence to show that he had withdrawn amount from ATM. The gold ornaments and other articles are missing from the cupboard. Unless the applicant is arrested, the recovery cannot be effected. The custodial interrogation of the applicant is necessary. Learned counsel for the complainant opposed the relief prayed in this application. It is submitted that the applicant is involved in the crime. The CCTV Footage shows that applicant

withdrawn amount from the ATM Centre. Even after the death of father, the amount was withdrawn by him. The applicant is interested in grabbing the property. The accused had conspired and misappropriated the property of parents. The applicant had pressurized the complainant for withdrawal of complaint filed against him. The recovery required to be effected. The State Bank of India had issued communication to the complainant dated 19th June, 2021, stating that as per the records, Mobile No.8380066190 is registered with the Account No.52072554823. The mobile number belongs to the applicant. It was also communicated that bank can provide CCTV Footage of ATM transaction up to 90 days from the date of direction to directly to the police on receipt of their request. He also relied upon the bank statement, which reflects the continues withdrawals by the applicant / accused. The complainant had taken care of parents. He had paid the charges of medical treatment. The complaint was made by him to the police on 13.08.2021, alleging threats by the applicant.

6] I have perused the documents on record. The complainant and the accused are brothers. The accused No.2 is their sister. From the documents annexed to this application, it is apparent that they were differences between the siblings on account of the property of parents. The father and mother of the applicant had expired. Will was executed by the father. The applicant has contended that he has appointed as

administrator / caretaker. The complaint proceeds with the allegations that while the mother was ill, the accused No.2 had come to Nanded. She called her son and on the same day, she returned to Pune. While leaving, she was carrying several bags. The key was given by mother to accused No.2. According to complainant, his mother had also disclosed that the cash and ornaments are lying in the cupboard. However, on inquiry with the sister by the complainant, she stated that key is with the applicant. The learned Sessions Judge had allowed the application preferred by the sister of the applicant. Apparently, at the first instance, the complainant was suspecting that his sister had taken away the articles, while leaving Nanded. Learned Sessions Judge in the order dated 31.08.2021 granting anticipatory bail to the applicant's sister had observed that when the theft came to the notice, key of Almirah was with accused No.1. Moreover, there is nothing on record to show that gold and cash as alleged by the informant was there in almirah. Except allegation, there is nothing on record to prove the said fact, particularly, the receipts about purchase of gold, or its photographs and even there is nothing to show as to whether the cash of Rs.7-8 lakhs had come. The application of the applicant was rejected on the ground that there was withdrawals from the account of the father even after his death on 19th April, 2021. The amount was withdrawn on 21.04.2021 to 27.04.2021. The applicant has admitted that after the death, that some amount is withdrawn by him for certain rituals, etc. The applicant was caretaker.

The ATM Card was with him. Thus, the custodial interrogation for recovery of gold ornaments, etc. is ruled out. The applicant had also instituted civil suit for partition of the property. Will deed executed by late father is in existence. Considering the factual aspects, the applicant need not be subjected to custodial interrogation. The investigation may proceed without subjecting applicant to custody. Hence, I pass the following order.

ORDER

- i] The application is allowed and disposed of.
- ii] In the event of arrest of the applicant in connection with Crime No.0262 of 2021 registered with Bhagya Nagar Police Station, Dist. Nanded, for the offences punishable under Sections 379, 404, 405 r/w 34 of the Indian Penal Code, the applicant be released on bail on his furnishing P.R. Bond in the sum of Rs 25,000/- (Rupees Twenty Five Thousand) with one or more sureties in the like amount.
- iii] The applicant shall report to the Investigating Officer on 20th, 21st and 22nd October, 2021 in between 11:00 am to 01:00 pm and thereafter, as and when called by the Investigating Officer till filing of the charge-sheet.

[PRAKASH D. NAIK]
JUDGE