

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

ANTICIPATORY BAIL APPLICATION NO. 715 OF 2021

1. Maruti Dhondu Upare
2. Ravindra Eknath Upare ... Applicants
Versus

The State of Maharashtra ... Respondent

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Mr. S. V. Marwadi i/b. Mr. N. M. Nadar, Advocate for the Applicants.
Mr. A. R. Kapadnis, APP for the Respondent – State.
Mr. Yogesh Patil (P. S.I.), Borivali Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 5th APRIL, 2021

PER COURT:

1. This is an application for anticipatory bail. The applicants are apprehending arrest in C.R. No. 515 of 2018 registered with Borivali Police Station, Mumbai for offences punishable under Sections 417, 419, 420, 192, 198, 200 r/w Section 34 of Indian Penal Code (for short “IPC”). The First Information Report (for short “FIR”) was registered on 23rd September, 2018.

2. The FIR was lodged by Shantaram Dhondu Upare. According to him, Vijay Pandurang Upare, Santosh Pandurang Upare and Sanjay Pandurang Upare are residing in Thane district. The complainant was closely acquainted with them. In February, 2018 he

was informed that their uncle Late Ganpat Krushna Upare has died on 3rd July, 2000. His wife Shobha Ganpat Upare died on 17th November, 1999. Ganpat Upare did not perform second marriage after death of his wife. His cousin Ravindra Eknath Upare in connivance with the Maruti Dhondu Upare and Jayram Narayan Bhandari has used name of Smt. Shobha Upare and by impersonating her with the help of another woman prepared Power of Attorney with the help of Advocate Umesh Thakkar in respect to property bearing Gat No. 306, 426, 859, 865, 487, 226, 328, 327, 225, 303, 360, 370, 384 & 428 and the house bearing No.136. The Power of Attorney was executed in favour of the aforesaid persons. The complainant perused the documents. Stamp paper was purchased in the name of fake woman. It was revealed that the photograph impersonating Shobha Ganpat Upare was of Smt. Taramati Kolte. She was the resident of Sindhudurg. Ganpat Krushna Upare had insurance policy bearing No. 920460378. The said policy was subscribed in 1994. Smt. Shobha Ganpat Upare was nominee in the policy. Ganpat Upare had no other legal heir. Smt. Taramati Kolte impersonated her as Shobha Upare and represented that original policy is lost and executed indemnity bond for settling claim and received cheque dated 29th November, 2001 in the name of Shobha Upare and cheated Life Insurance Corporation.

3. The applicants had preferred an application for anticipatory bail before the Sessions Court. The said application was rejected by order dated 13th March, 2020.

4. Learned advocate for the applicants submitted that, Ganpat Upare had married with Taramati and renamed her as Shobha. If she had intended to misguide any person, she would not have annexed her own photo on the documents and would not have mentioned her own address. She could have pasted photo of deceased Shobha. The applicant No.1 is a senior citizen aged about 74 years. The applicant No.2 has not benefited from the Power of Attorney. Applicant No.1 had acted as witness to the document. There is no evidence to connect the applicants in respect to the allegations of claiming LIC amount which was received by Taramati Kolte on 29th November, 2001. The Power of Attorney was executed on 4th January, 2006. The property dispute between the family members are subject matter of pending civil litigation. There were no attempt to arrest the applicants. They are falsely shown as absconding. The applicant No.1 had produced documents and cooperated with investigation. Panchanama dated 27th July, 2019 was recorded in that regard. The applicant No.1 has attended the police station. Custodial interrogation of the applicants is not necessary. The applicant No.1 and complainant are the real brothers. Civil dispute is pending

between them. The complaint is filed to harass the applicants. The Power of Attorney was executed on 4th November, 2006. The FIR was lodged on 22nd October, 2018.

5. Learned APP submitted that the applicants were involved in fabricating false documents. False Power of Attorney was prepared. Ganpat Upare died on 3rd July, 2000. His wife Shobha Upare died on 17th November, 1999. She was impersonated by Taramati Kolte. She was acting in connivance with the applicants. Taramati had obtained the amount towards LIC policy of Ganpat Upare. The applicants have played a vital role. Their custodial interrogation is necessary.

6. The complainant and applicant No.1 are brothers. It appears that there are disputes between them. The wife of Ganpat Upare died on 17th November, 1999 and thereafter, Ganpat Upare died on 3rd July, 2000. The case relates to preparing Power of Attorney dated 4th November, 2006. The FIR was lodged in 2018. The case of the applicants is that accused No.1 is second wife of Ganpat Upare. The transaction of mutating name in Gav Namuna No.7 was done in 2002. The Power of Attorney was executed on 4th November, 2006. The relevant documents are annexed to this application. The Power of Attorney was executed in the name of Shobha Ganpat Upare. It is contended that Ganpat Upare had performed second marriage. The photograph appearing on the Power of Attorney is of

Taramati Kolte, who was renamed as Shobha Upare. Her statement has been recorded on 4th April, 2018. In the said statement she has stated that Ganpat Upare have performed marriage with her on 10th May, 2000. The applicant No. 2 is her nephew. The claim of LIC was settled with second wife of Ganpat Upare. Charge-sheet is filed against arrested accused. Ration card was issued in the name of shobha Ganpat Upare in 2000. Although the Power of Attorney was executed on 4th November, 2006, the FIR was lodged on 22nd October, 2018. Taramati Dattatray Kolte was arrested. She has been granted bail by order dated 19th March, 2021. While granting bail, the learned Sessions Judge has observed that Smt. Taramati Kolte had allegedly impersonated wife of Ganpat Upare. Statement of witness Dinanath Khamkar mentions that, Ganpat had told him about his marriage with Taramati Kolte. Witness Dattatray Upare had stated that he saw Taramati Kolte at the house of Ganpat Upare. She has obtained ration card on 5th September, 2000 as wife of Ganpat Upare. Prima facie it is possible that Taramati Kolte have married to deceased Ganpat, although it is question of trial. The mutation must have taken place on the basis of the application moved by the beneficiaries thereof, due to which no adverse inference can be drawn against Taramati Kolte. Co-accused Jayram Narayan Bhandari was also granted bail. He had acted as attesting witness to the documents. Considering the

aforesaid factual aspects, the applicants need not be subjected to custodial interrogation. Hence, I pass the following order :

ORDER

- (i) Anticipatory Bail Application No. 715 of 2021 is allowed;
- (ii) Interim order dated 15th March, 2021 is hereby confirmed.
- (iii) In the event of arrest of the applicants in connection with in C.R. No. 515 of 2018 registered with Borivali Police Station, Mumbai, the applicants be released on bail on executing P. R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iv) The applicants shall attend the investigating officer as and when called for.
- (v) Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)