

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

ANTICIPATORY BAIL APPLICATION NO.1109 OF 2021

Sukhdev Namdev Chavan

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....
Mr.Satyam R. Gaud i/b. Mr.Raj Saraf, Advocate for the Applicant.

Ms.Anamika Malhotra, APP for the Respondent – State.

Mr.Mehul Thakker, Advocate for the Intervenor.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 30, 2021.

P.C. :

The applicant has preferred this application under Section 438 of Cr.P.C., in connection with M.E.C.R. No.118 of 2021, registered with Borivali Police Station, Mumbai, for the offences punishable under Sections 406, 420, 465, 467, 468, 471 read with 120-B of Indian Penal Code (“IPC”, for short).

2 The complainant is the younger brother of the applicant. Private complaint was filed before the Court of learned Metropolitan Magistrate at Borivali, Mumbai, seeking directions for investigation under Section 156(3) of Cr.P.C.

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3 The complainant has alleged that the accused is his elder brother. The complainant was resident of Room No.3/4 Pandit Chawl, Ram Mandir Road, Borivali, Mumbai. SRA took over the chawl for redevelopment and newly constructed flats were allotted in the name of Namdev Vithal Chavan. Father of complainant was also own a shop at Madhumilan Cooperative Housing Society Limited, Borivali West. The father of the complainant and the applicant had expired on 26th June, 2019, leaving behind family members. He died intestate. The complainant got separated and started residing at Navi Mumbai. All of them had share in the property of their father. There was no family settlement or distribution of assets. The complainant came to know that the amount is being directly transferred in the account of the accused. The accused transferred all the properties in his name. The accused prepared false documents to convert property in his name. Power of attorney was fabricated. False documents were submitted to Government offices for transferring property. Release deed and deed of declaration was prepared. Complaint was filed with police. Since FIR was not registered, private complaint is filed.

4 The applicant preferred application for anticipatory bail before the Sessions Court at Dindoshi. The application was rejected by order dated 19th April, 2021.

5 Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case by his own brother due to property dispute and personal grudges. The complainant has made grievance after a gap of about eight years claiming share in the property. None of the other family members had made any grievance against the applicant. The complainant is having his house at Ghansoli. All of the costs of construction was paid by the applicant providing the contractor for erecting house cum shop having one plus two storey house. Apart from this in lieu of his share in the ancestral property, complainant has accepted an amount of Rs.10,61,000/-. On 28th July, 2011, a registered release deed came to be executed before the authority with respect to shop No42, situated at Madhumilan CHSL Borivali Mumbai. The complainant is disputing his signature in the documents. The complainant after taking up his share from the ancestral property and when the mother of the applicant and even rest of three married sisters have given up their share, the complainant is staking a claim since the price of the properties

have gone up. The mother of the applicant has executed her own last Will and Testament thereby she has appointed the applicant as nominee. The dispute, if any, is of civil nature. The complainant has initiated criminal proceedings to pressurise applicant. Custodial interrogation of the applicant is not necessary. The mother had filed NC complaint against the complainant on 18th March, 2019. The entire matter relates to documents. There is no element of cheating or forgery.

6 Learned APP submitted that in pursuant to the directions of the Court, M.E.C.R. has been registered and the investigation is in progress.

7 Learned counsel for the intervenor/complainant opposed the application. The complainant has filed affidavit-in-reply alongwith several documents. It is submitted by the learned advocate for the intervenor that the applicant is involved in fabrication of documents. He has forged the Deed of Declaration, custodial interrogation of the applicant is necessary. The applicant has suppressed the information that he has prepared bogus documents of the complainant and forged his signature and used the same before SRA authority. False address was

shown. The applicant has forged Release Deed, Deed of Declaration and Will and other documents. The documents are in custody of the accused. The applicant is involved in fabrication of documents. Learned Sessions Judge has rightly rejected the application for anticipatory bail. The intervenor has relied upon several documents which are annexed to the affidavit-in-reply. The investigation is in progress. Custodial interrogation of the applicant is necessary to recover the fabricated documents.

8 The dispute is amongst the brothers in respect of the ancestral property. The complainant is younger brother of the applicant. Apparently, the complaint is filed belatedly. It appears that the police did not take cognizance of the complaint and hence, private complaint was filed. The learned Magistrate issued directions under Section 156(3) of Cr.P.C. and in pursuant to that M.E.C.R. was registered. The claim of the complainant is disputed by the applicant. The entire case relates to documents, custodial interrogation of the applicant is not necessary. The applicant has contended that requisite share of the complainant is provided to complainant by parting the amount. After a period of eight years, private complaint was filed by respondent no.2. Considering the nature of dispute, the applicant need not be subjected to

custodial interrogation. Hence, the application deserves to be allowed.

:: ORDER ::

- (i) Anticipatory Bail Application No.1109 of 2021, is allowed;
- (ii) In the event of arrest of the applicant in connection with M.E.C.R.No.118 of 2021, registered with Borivali Police Station, Mumbai, he be released on bail on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall appear before the investigating officer on 7th 8th and 9th July, 2021, between 11:00 a.m. to 01:00 p.m., and, thereafter, as and when called for, till filing of the charge-sheet;
- (iv) Anticipatory Bail Application No.1109 of 2021, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)