

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

ANTICIPATORY BAIL APPLICATION NO. 1115 OF 2021

Eric Mathias

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

Mr.Jagdish G. Shetty a/w Mr. Ayub Shaikh, Advocate for
Applicant.

Ms. Anamika Malhotra, A.P.P. for the State-Respondent.

Mr. Parth Vyas i/b. Ms. Archana Khan, Advocate for
Complainant.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd MAY, 2021

PC.

1. This is an application for anticipatory bail. The First Information Report (for short "FIR") has been registered with Khar Police Station vide C.R. No.658 of 2020 for the offence under Section 420 read with Section 34 of Indian Penal Code (for short "IPC").

2. In the FIR dated 27.12.2020 the complainant has alleged that she is aged about 83 years. She is alone. She is owner of shop No.3 situated at Vincent House. The said shop was purchased by her parent. It was rented out. The licensee had

not vacated the shop. She filed the suit in Small Causes Court. In 2016 on account of her age it was difficult for her to attend the Court proceedings. The applicant was known to her. The complainant executed Power of Attorney in the name of the applicant along with affidavit authorizing him to attend the Court proceeding on her behalf. The applicant took the complainant to office of Sub-Registrar at Khar under the pretext of registering Power of Attorney. The applicant prepared the agreement dated 29.03.2016 for sale of aforesaid shop premises. The complainant did not read the contents of document. She had not purchased the stamp paper. The Power of Attorney was notarized. On 02.04.2016 loan of Rs. 5 lakhs was obtained by her. She also obtained Rs.75,000/- from applicant on interest. Thus, the amount was of Rs. 5.75 lakhs was obtained from the applicant. The applicant has also paid amount of Rs.1.50 lakhs to cousin of applicant. Since, the applicant was suffering from cataract, she did not read document. The complainant was in search of buyer for sale of shop. She decided to cancel the Power of Attorney issued in favour of the applicant in July 2019 by publishing notice. In September 2020, the person named Arun Saw approached her. He was interested in purchasing the shop premises. Consent terms were executed before the Court of Small Causes between parties. MOU was executed with Arun Saw. The amount of Rs.30 lakhs was paid as per the consent term to licensee Tiwari. Possession was given to the complainant. As per MOU

shop was sold to Arun Saw for Rs. 89 lakhs. Amount of Rs.30 lakhs paid to Tiwari, Rs.15 lakhs given to the complainant, Rs.4.24 lakhs were paid to society towards dues. Balance amount was to be received from Arun Saw, hence sale deed was not executed. The key of the shop handed over to Arun Saw for carrying out repairs. From 18.10.2020 Arun Saw was carrying out repairs of the shop. The society was instructed to give NOC for repairs. The complainant was informed that agreement of sale was executed in favour of Ethic Mathias (applicant). The complainant was informed by Arun Saw that the applicant had forcefully entered into shop premises. The articles belonging to the complainant were removed from the shop. The applicant trespassed into property.

3. Learned advocate for the applicant submitted that dispute is relating to property. Custodial interrogation of the applicant is not necessary. The claim of the complainant is false. She had accepted the consideration from the applicant. Documents transferring the property was executed by complainant with the applicant. The complainant was in need of finance and she wanted to sell the shop premises. She approached the applicant prior to execution of agreement. The complainant had applied to the society for grant of NOC for sale. The society informed her that issue of property tax is not resolved. The agreement of sale was executed on 29.03.2016 and registered original agreement is in possession of the

applicant. There is delay in lodging the FIR. The complainant did not approach the applicant to collect the balance consideration of Rs.10 lakhs. The applicant relied upon the power of attorney, bank statement, letters issued to the society and other documents. The applicant filed suit in the City Civil Court. The said suit is pending. The complainant filed Writ Petition in the High Court for registration of FIR. The applicant need not be subjected to custodial interrogation. The complainant had received the consideration of Rs. 5 lakhs and the balance amount of Rs. 10 lakhs was to be paid to her. The allegations are afterthought.

4. Learned APP submitted that the complainant is senior citizen aged about 83 years. The property was allegedly sold to the applicant by the complainant. The value of the property was more than 80 lakhs. It cannot be sold for Rs.15 lakhs. The complainant was mislead by the applicant. He took undue advantage of the age of the complainant. The document was registered under the garb of registration of power of attorney.

5. I have perused the documents. The shop premises belong to the complainant. She is aged about 83 years. According to the complainant power of attorney was to be executed with the applicant. However, the agreement for sale was executed by misrepresentation. The third party was ready to purchase the property and substantial amount was received from the party.

The value of the property is much more than the amount for which it was purportedly sold to the applicant. According to the applicant the balance amount of Rs.10 lakhs was to be paid to the complainant. She did not approach the applicant to recover the said amount. The informant cancelled power of attorney dated 29.06.2016 by public notice. She found the prospective buyer who executed MOU with her and paid her part consideration. The Special Power of Attorney which is notarized is also dated 29.03.2016. The Special Power of Attorney was also registered on the same date. Logically the agreement for sale and the power of attorney could not be executed on the same day which shows that the complainant is deceived. It is not disputed that the Power of Attorney was cancelled. There is reason to believe that false representation was made to the complainant and the property got sold for meager amount of Rs.15 lakhs although the value of which is more than 80 lakhs. Hence no case for grant of Anticipatory Bail is made out. Application deserves to be rejected.

ORDER

- (i) Anticipatory Bail Application No. 1115 of 2021 is rejected.

(PRAKASH D. NAIK, J.)