IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 863 OF 2019

1. Prabhakar Popatrao Pingale
2. Dnyaneshwar Popatrao Pingale … Applicants

V/s.

The State of Maharashtra … Respondent

WITH
CRIMINAL APPLICATION (APPP) NO.901 OF 2019
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 863 OF 2019

Ranjana Sadashiv Shinde … Intervenor

<u>IN THE MATTER BETWEEN :-</u>

Prabhakar Popatrao Pingale & Anr. … Applicants

V/s.

The State of Maharashtra … Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 864 OF 2019

Mohan Popatrao Pingale … Applicant

V/s.

The State of Maharashtra … Respondent

WITH
CRIMINAL APPLICATION (APPP) NO.902 OF 2019
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 864 OF 2019

Ranjana Sadashiv Shinde … Intervenor

<u>IN THE MATTER BETWEEN :-</u>

Mohan Popatrao Pingale … Applicant

V/s.

The State of Maharashtra … Respondent

Mr. Ashok P. Mundargi, Senior Advocate i/by Mr. Veerdhawal Kakade for Applicants in ABA No.863 of 2019.

Mr. V. P. Sawant, Senior Advocate i/by Mr. Prabhakar Jadhav for Applicant in ABA No.864 of 2019.

Mr. Piyush Toshnival i/by Mr. Vivek N. Arote for Intervenor/First Informant.

Smt. Veera Shinde, A.P.P. for the Respondent-State.

Mr.S.G. Dambale, A.P.I., Panchavati Police Station, District Nashik.

CORAM : A.S. GADKARI, J.
DATE : 25th October, 2021.

P.C. :

1. These are the applications under Section 438 of the Criminal Procedure Code (for short "Cr.P.C.") for pre-arrest bail in C.R. No.I-507 of 2018 dated 31st October, 2018 for offences punishable under Sections 420, 454, 467, 468, 471, read with Section 34 of the Indian Penal Code registered with Panchavati Police Station, District Nashik.

2. Heard Mr. Mundargi, learned Senior Advocate for Applicants in Anticipatory Bail Application No.863 of 2019, Mr. Sawant, Senior Advocate for Applicant in Anticipatory Bail Application No.864 of 2019, Mr. Toshniwal, learned counsel for first informant at length and Smt. Veera Shinde, learned APP for Respondent-State. Perused record of investigation.

3. The record indicates that, by an Order dated 10th April, 2019, the applicants were granted interim relief. By subsequent Orders, the applicants

were directed to attend Investigating Officer and to submit General Power of Attorney dated 16th April, 2009, Development Agreement dated 15th May, 2008 and other related documents. Applicants were also directed to attend Investigating Officer on stipulated dates and to join the process of investigation including furnishing their specimen handwriting for the purpose of investigation. Applicants have complied with the said directions.

4. The First Information Report (for short "FIR") is lodged by Smt. Ranjana S. Shinde on 31st October, 2018. The informant is real sister of applicants. Prosecution case in brief is that, the father of applicants and first informant namely Shri. Popatrao Mahadev Pingale passed away in the year 2008. After his demise the applicants had been to the house of the informant in the month of April-2009 and under the pretext of establishing an Educational Institution, took her signatures on two blank papers. That, the applicants thereafter, prepared forged and fabricated documents, mutated revenue records, executed bogus General Power of Attorney dated 25th June, 2009 and Development Agreement dated 15th May 2008 before two different Notaries and sold approximately 9 ancestral properties at Makhmalabad, admeasuring about 10 Acres & 30 ares for a sum of Rs.85 Lakhs, thereby causing wrongful loss to the first informant and wrongful gain to the applicants. It is also alleged that, the applicants for gaining wrongful

pecuniary benefit for them and by denying the ancestral right of the first informant, committed criminal breach of trust and an act of cheating against her. In this brief premise, the FIR is lodged.

5. Mr. Toshniwal, learned counsel for the first informant submitted that, the applicants forged and/or fabricated General Power of Attorney dated 25th June, 2009 and the said fact can be discerned from Notarial Register Serial No.'328/09 dated 30th April, 2009', whereas, the date of issuance of Stamp Paper is 25-06-2009. He further submitted that, the thumb impression of first informant is not appearing on the last page of the said General Power of Attorney and therefore it can be presumed that, it has been forged and/or fabricated. He further submitted that, even on the last page of Development Agreement dated 15th May, 2008, thumb impression of the first informant is not appearing, which further gives rise to a strong suspicion that, the said document is also a forged and fabricated document. He submitted that, by preparing the said two documents, the applicants who are real brothers of informant, sold various ancestral properties, rather the properties which are belonging to her father to a developer and have gained substantial wrongful financial benefit for them causing wrongful loss to the informant. He therefore, on instructions submitted that, the custodial interrogation of the applicants is necessary for the investigation of the present crime.

6. The learned A.P.P. has produced before me record of investigation. The record indicates that, the applicants have adhered to the directions issued by this Court from time to time and have also given their specimen handwriting for the purpose of investigation. That, on 24th November, 2006, Applicant Mr. Mohan Pingale, being constituted Attorney of Popatrao Mahadev Pingale, had executed an Earnest Receipt of acceptance of payment towards sale of four properties, more specifically mentioned in the said document in favour of Mr.Kantilal M. Lahoti and another. That, after demise of Shri. Popatrao Pingale, all the other legal heirs of late Popatrao Pingale executed General Power of Attorney in favour of Applicant Mr. Mohan Pingale on 25th June, 2009. The said document is Notarized by Advocate Sanjeevani B. Kamale, Nashik Road, District Nashik. That, the Development Agreement pertaining to four properties as were mentioned Earnest Receipt dated 24th November, 2006, was subsequently executed on 15th May, 2008 between all the legal heirs of Popatrao Pingale on one hand and M/s. Anandvan Biltwell on the other hand. The said document is notarized before Shri Devidas K. Palde, Advocate and Notary, Nashik Road, District Nashik.

In this background, it is to be noted here that, in the FIR itself the informant has stated that, the applicants herein in the month of April – 2009 took her signatures on two blank papers and by using the said two documents have sold various ancestral properties to third parties.

7. It is not the case of the first informant that any Government Security is forged or fabricated by the applicants herein. The allegation of the first informant that, her signatures were obtained on blank papers and said papers which were utilized for preparing General Power of Attorney dated 25th June, 2009 and Development Agreement dated 15th May, 2008, prima facie cannot be accepted because her signatures appear serially on the said documents without their being any space kept in between. If the contention of the learned counsel for the first informant is to be accepted that the thumb impression of the first informant is not reflecting against/or on her photographs in said two documents, in that case, it may perhaps be the error or mistake on the part of the concerned Notary, who might not have given much attention to the said procedural aspect. As noted earlier so also in the FIR, it is not the case of the informant that, her signatures are forged by the applicants or any valuable security is forged or fabricated by the applicants. In view thereof, prima facie it appears to this Court that, application of Section 467 of IPC to the present crime is perhaps misplaced.

8. Record further indicates that, during the course of investigation, the concerned Investigating Officer has recorded statements of the Advocate Smt. Sanjeevani B. Kamale, Advocate & Notary, who has notarized General

Power of Attorney dated 25th June, 2009 and has entered it into Notarial Register at Serial No. ‘328/09 dated 30th April, 2009’. In her statement, she has stated that, on 30th April, 2009, Applicant Mr. Dnyneshwar Pingale, and Mr. Mohan Pingale requested her to come to their house at Makhmalabad and requested her to notarize General Power of Attorney. She accordingly took signatures of concerned persons in the Notarial Register on page No.91 at Serial No. ‘328’. However subsequently she realized that the said General Power of Attorney was typed on a Stamp Paper of Rs.100/- and not on a Stamp Paper of Rs.500/-. As execution of General Power of Attorney was necessarily on a Stamp Paper of Rs.500, she told the applicants to bring the necessary Stamp Paper and on 30th April, 2009 she did not complete the procedure of notarization of the said document. However, the entry of registration of the said document at Serial No. ‘328/09’ on page No. 91 was not hexed out and was kept intact. That, after applicants brought the Stamp Paper of Rs.500/- on 25th June, 2009 and the said document i.e. General Power of Attorney dated 25th June, 2009 was executed with an endorsement of dated 30th April 2009.

Witness Devidas Palade, Advocate & Notary, in his statement has stated that, on 15th May, 2008, Advocate N. R. Shinde along with all the executors of Development Agreement dated 15th May, 2008 came to his office with request to notarize the said Development Agreement. He accordingly notarized the said agreement at Serial No. ‘791/2008’. He has categorically stated that, the said document was notarized in presence of all the concerned and the said persons have signed in the notarial register before him. It is to be noted here that, on the said document dated 15th May, 2008, except Smt. Kalavati Popatrao Pingale, all other persons have put their signatures and nobody of them have took their thumb impressions thereof.

9. There is another facet of the present case.

Record indicates that, on 10th October, 2014, the informant being one of the signatory has executed a Deed of Relinquishment in favour of the applicants herein pertaining to the six other properties which are not farming part of the Earnest Receipt dated 24th November, 2006. The said document is duly registered before the Sub-Registrar of Assurances, Nashik-6, District Nashik, on 13th October, 2014. Though, the informant has relinquished her rights from six properties, as more specifically mentioned in the Deed of Relinquishment dated 10th October, 2014, she has incorporated those properties also in the present crime without disclosing the fact that, she has relinquished her rights pertaining to the said six properties mentioned in the said Deed of Relinquishment.

Mr. Mundargi submitted that, as the applicants did not submit themselves to the unreasonable monetary demands of the informant pertaining to the balance four properties, the informant as and by way of an after thought, has filed present crime. Prima facie, I find substance in the said submission.

10. In view of the above and after taking into consideration the progress of investigation, this Court is of the view that, the custodial interrogation of the applicants for further investigation of the present crime is not necessary and they can be protected by pre-arrest bail.

11. Hence, the following Order :-

i) In the event of arrest of Applicants in C.R. No. I-507 of 2018 dated 31st October, 2018 registered with Panchavati Police Station, District Nashik, the Applicants be released on bail on their furnishing P.R. Bond of Rs.25,000/- each with one or two separate local sureties in the like amount.

ii) Applicants shall attend the Investigating Officer as and when called for upon receipt of notice in writing thereby mentioning specific date and time of attending concerned Police Station, till filing of the charge-sheet only.

iii) Applicants shall not tamper the evidence and/or influence the prosecution witnesses.

iv) Anticipatory Bail Application Nos. 863 of 2019 and 864 of 2019 are allowed in the aforesaid terms.

v) In view of disposal of Anticipatory Bail Application Nos. 863 of 2019 and 864 of 2019, Criminal Application Nos. 901 of 2019 & 902 of 2019 do not survive and are also accordingly disposed off.

[A.S. GADKARI, J.]

SAJAKALI LIYAKAT JAMADAR
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