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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 751 OF 2018

HARSHAD AJIT LAHOTI AND ANR ....APPLICANTS

V/s.

THE STATE OF MAHARASHTRA AND ANR .....RESPONDENTS

Mr. Rajiv Chavan Senior Advocate a/w Mr. Aniket Nikam, a/w Priyanka Chavan a/w Mr. Piyush Toshnival a/w Vivek Arote a/w Mr. Amit Icham i/b Mr. Aashish Satpute for the applicant
Mrs. J. S. Lohokare APP for the State
Mr. Shailesh Sankhe, crime branch, Pune City.
Mr. Niranjan Mundargi i/b Mr. Omneel A. Jadhav for respondent no. 2

CORAM : NITIN W. SAMBRE, J.

DATE: DECEMBER 13, 2021.

P.C.:

1] Heard respective counsel. Applicants are seeking pre-arrest bail in C.R. No. 273/2017 registered with Dattawadi Police Station, Pune for offence punishable under Sections 465, 468, 471 r/w 34 of the Indian Penal Code.

2] Deceased Ajit Lohati expired on 07/10/2021 leaving behind widow Nirmala, son Harshad and daughter Shefali. Son Harshad married to Rucha and blessed with daughter.

3] It appears that deceased Ajit had left behind big fortune in the form of movable and immovable properties.

4] Prosecution case is, Shefali, unmarried daughter alleged that from 25/08/2002 to 25/08/2017, her mother and brother namely Nirmala and Harshad have forged her signatures on various documents thereby preparing power of attorneys, affidavits and such other essentials for the purpose of opening of bank accounts, D-mat accounts, transferred shares and also processed loan applications, received consideration etc resulting into registration of the offence.

5] Amongst other, documents which are claimed to be containing forged signatures are, Powers of Attorney dated 26/03/2008, 29/07/2008, 30/05/2013, 09/05/2014 and Affidavit dated 21/05/2013.

6] As far as Power of Attorney dated 26/03/2003 is concerned, it is informed that same is used for opening bank account, Power of Attorney dated 29/07/2008 is used for change of signature in HSBC Bank. Power of Attorney dated 30/05/2013 permitting opening of the account in the name of H.U.F., Power of Attorney dated 09/05/2014 for raising loan with Axis Bank (Loan proposal was cancelled) and Affidavit dated 21/05/2013 for issuing pan card in the name of H.U.F.

7] It is claimed that all the aforesaid documents contain forged signature of the complainant. So as to substantiate the same, learned APP and Mr. Mundargi appearing for the complainant would invite my attention to entries of departure and arrival of odd dates in the passport of the complainant. It is claimed that on the date on which aforesaid claims are executed or notarized, complainant was not in the country which is sufficient to infer forging of signatures of the complainant. It is also the contention of Mr. Mundargi and learned APP that complainant a helpless woman, is cheated by the accused persons so as to deprive her of lawful right over the estate of her deceased father.

8] Mr. Mundargi, while assisting the learned APP has urged that there are documents containing signatures of the complainant at variance addressed to the banks for linking, de-linking on the very same day of the accounts and such other communication to infer prima facie involvement of the applicants.

9] I have considered the aforesaid submissions in the light of the investigation carried out till this date as learned APP has shown the report of the handwriting expert on the disputed signatures, statement of two notaries namely Advocate Sonawane and Advocate Ghuge.

10] In the aforesaid background, this Court is required to be sensitive to the following facts.

(a) Applicants are on Ad-interim protection since 24/04/2017 i.e. for last more than four and half years which order is in operation till this date.

(b) A civil suit at the behest of complainant Shefali is pending adjudication on the file of Civil Judge Senior Division being Special Civil Suit No. 508/2019 wherein a claim for partition in relation to movable and immovable properties is made.

11] In the said suit, declaration is sought that Release Deed dated 12/03/2008 executed by complainant who is plaintiff to the said suit in favour of brother who is accused in this crime is illegal and not binding. Similar prayer is made in regard to applicant mother. Certain interlocutory orders I am informed were sought in the form of temporary injunction and vide order passed below Exh. 5 in the said Suit, Court of Civil Judge Senior Division, Pune rejected the said prayer. Of course, complainant has every right and authority to question the said order before the competent court.

12] The specimen of handwriting expert is not conclusive against the applicants. One of the notary has mentioned that complainant was present when the document was authenticated.

13] Pendency of the suit for the very same relief at the behest of complainant is an admitted fact. Apart from above, Powers of Attorney which are notarized are required to be considered in the light of presumption under Section 85 of the Indian Evidence Act. There is presumption in favour of execution of such document or such document is executed and authenticated unless contrary is proved.

14] In the wake of above, at this stage of proceedings it has to be inferred that such documents exist as they were executed and authenticated. Statement of notaries to major extent support the case of the applicants.

15] Apart from above, whether at the relevant time when the documents were executed or authenticated, complainant was present in India is an issue which can be established during the trial of the Suit or this proceedings which if Investigating Officer so desires may proceed ahead with the filing of charge-sheet of the accused persons.

16] Considering the aforesaid fact viz. execution of Release Deed by Applicant about which relief of declaration is pending at the behest of complainant before the competent civil court in a suit for partition and the findings recorded herein above, in my opinion, case for confirmation of Ad-interim relief is made out.

(i) In the event of arrest of applicants in C.R. No. 273/2017 registered with Dattawadi Police Station, Pune for offence punishable under Sections 465, 468, 471 r/w 34 of the Indian Penal Code, they shall be released on bail on furnishing P.R. bond in the sum of Rs. 50,000/- each with one or more sureties in the like amount.

(ii) Applicants shall neither influence prosecution witnesses in any manner nor tamper with evidence.

(iii) Applicants shall attend Investigating Officer from 20/12/2021 to 29/12/2021 between 10.00 a.m. to 12.00 noon and thereafter as and when directed and shall cooperate with the Investigating Officer in production of documents.

(iv) Applicants shall not leave the country without prior intimation to the Court below and in case if they wish to leave the country, applicants shall furnish itinerary of travel to the Court below.

17] Application stands disposed of.

[NITIN W. SAMBRE, J.]