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

ANTICIPATORY BAIL APPLICATION NO. 936 OF 2019

Jayesh Tokershi Shah and anotherApplicants

V/s.

The State of MaharashtraRespondent

**WITH
INTERIM APPLICATION NO. 253 OF 2019**

Hemendra Pranjeevan BosmiyaApplicant

IN THE MATTER BETWEEN

Jayesh Tokershi Shah and anotherApplicants

V/s.

The State of MaharashtraRespondent

Dr. Samarth S. Karmarkar i/b Karmarkar & Associates for the
applicants

Ms. Sharmila S. Kaushik APP for the State

None for the intervener

Mr. Govind Ekilwale P.S.I., Mira Road Police Station

CORAM : NITIN W. SAMBRE, J.

DATE: JULY 28, 2021.

P.C.:

1] Both applicants are seeking pre-arrest bail in C.R. No. 35/2019

registered with Mira Road Police Station for offence punishable under Sections 420, 465, 467, 468, 471, 474 r/w 34 of the Indian Penal Code.

2] The case of the prosecution against the applicants is, based on false power of attorney, applicants got executed/created interest in certain immovable property which was already owned by the complainant.

3] Learned counsel for the applicant Dr. Karmarkar while trying to make out a case for grant of bail would urge that this Court vide order dated 18/04/2019 has already protected the applicants and as such, for last more than two years, applicants are on Ad-interim protection. According to him, complainant has not approached the investigating agency with clean hands and has rather suppressed certain material facts. He would try to invite attention of this Court to the criminal antecedents against the complainant. Dr. Karmarkar then would urge that applicants have cooperated with the investigating agency. Since the offence in question is based on

documents and the documents are very much available to the investigating agency, no purpose will be served in rejecting the prayer for grant of pre-arrest bail as the custodial interrogation is not warranted. According to him, applicants be granted two weeks time so as to comply with the last order dated 23/07/2021 as the document i.e. power of attorney based on which an offence is alleged to have been committed by the applicants is required to be traced.

4] Learned APP while opposing the prayer for bail would urge that there is enough material collected during the investigation so as to demonstrate prima facie involvement of the applicants in the offence in question. According to her, applicants got created rights in the property owned by late Rose Handricks based on power of attorney which is a bogus document. She would further claim that custodial interrogation of the applicants is necessary as so called notarized power of attorney, in spite of chance given by this Court, is not produced before the Investigating Officer. As such, custodial interrogation is necessary.

5] Considered rival submissions.

6] Offence is in relation to immovable property which was owned by Rose Handricks who expired on 01/05/2004. It appears that applicants have got the power of attorney executed from the said owner on 29/02/1992. Said power of attorney appears to be bone of contention in the matter of registration of crime in question. Though on instructions, learned counsel for the applicants on last date assured this Court that the said documents will be produced before the Investigating Officer by today, however, the fact remains that said documents are not produced as is informed by the learned APP on instructions from the Investigating Officer. Learned counsel for the applicants rather is seeking time of fortnight to search and produce the said documents, which fact speaks of existence of such document and applicants are intentionally not producing the same in spite of undertaking given to this Court.

7] In the aforesaid background, this Court is required to be sensitive to the conduct of the applicants in not cooperating with the

investigating officer and also in not honouring the commitment/undertaking given to this Court. It appears that applicants are trying to play trick with this Court as the undertaking given is not honoured.

8] The contention that applicants need more time to search documents appears to be far away from the truth and speaks of very criminal intention of the applicants as they are enjoying Ad-interim protection from this Court for last more than two years and have not cooperated with the investigation.

9] Even if the offence in question is based on documents, the document, power of attorney is a unregistered one and the preponderance of probability warrants that applicants are custodian of the said documents which they are intentionally not producing.

10] Apart from above, investigation carried out till date apparently reflects prima facie involvement of the applicants in the crime in question, as the power of attorney, based on which the offence alleged

to have been committed appears to be a sham and bogus document.

11] These are serious criminal antecedents against each of the applicants.

12] In that view of the matter, no case for grant of pre-arrest bail is made out.

13] Application as such fails, stands rejected.

13] In view of disposal of anticipatory bail application, connected interim application also stands disposed of.

[NITIN W. SAMBRE, J.]

Order is corrected pursuant to speaking to minutes order dated 03/08/2021.