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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2127 OF 2021

KAILASH CHHATRAPATI PATIL AND ANR

....APPLICANTS

V/s.

**THE STATE OF MAHARASHTRA
AND ANR**

.....RESPONDENTS

Mr. A. V. Chatuphale for the applicants

Ms. Sharmila S. Kaushik APP for the State

Dr. Abhinav Chandrachud a/w Ms. Shweta Rathod a/w Ms. Koshiki
a/w Kavya Bhandekar i/b Elixir Legal Services for respondent no. 2

CORAM : NITIN W. SAMBRE, J.

DATE: DECEMBER 1, 2021.

P.C.:

1] Pursuant to directions issued by the Magistrate, crime no. 335/2018 came to be registered with APMC Police Station for offence punishable under Sections 420, 465, 467, 468, 471, 474 and 120(B) of the Indian Penal Code.

2] Case of the prosecution is, applicant got executed Power of

Attorney dated 21/03/1991 and as a sequel, Deed of Confirmation dated 27/06/2011 in the name of dead persons thereby creating right in relation to agricultural land bearing survey no. 51/4 and also got mutated the same in his name.

3] Submissions of learned counsel for the applicant are, offence alleged is entirely based on documentary evidence which are very much available with the investigating agency. He further undertakes to produce all the original documents for the purpose of investigation before the Investigating Officer.

4] It is further claimed that documents Power of Attorney, Deed of Confirmation were executed after parting with consideration so as to neutralize earlier transaction with Arts Constructions.

5] He would further claim that a civil suit at the behest of complainant is already pending before competent civil court in relation to very same allegation.

6] Learned APP on instructions from the Investigating Officer and with assistance of Dr. Chandrachud, appearing for the complainant would urge that owners of the property namely Gorakh, Malhari, Dudhabai expired prior to execution of confirmation Deed dated 27/06/2011. It is claimed that Power of Attorney shall be valid till executor is alive. As such, Deed of confirmation was executed for and on behalf of dead persons. Further contentions are, Power of Attorney claimed to have been executed before Notary Mr. Sonawane whose such title was withdrawn was under cloud. It is further claimed that custodial interrogation of the applicant is necessary to seize the documents.

7] Considered rival submissions.

8] The fact that at the behest of the complainant for very same allegation in the F.I.R., civil suit is pending can be inferred from the record as the copy of Plaint in R.C.S. 2/2016 initiated by the complainant on the file of Civil Judge Senior Division Thane wherein a relief of declaration and injunction is claimed in regard to same

property, is admitted.

Hence, non-vesting of lawful title of the property involved in the offence has to be established by the complainant in the above Suit.

9] Apart from above, Power of Attorney dated 21/03/1991, settlement Deeds in between Arts constructions and firm of the applicant on 01/02/1989 so also other documents viz. Sathe Karar Patra, acknowledgment receipt of the amount and also cancellation of earlier deed/transaction between complainant, Arts Constructions, firm of the applicant are very much produced on record of which originals are informed to be given to investigation officer. These documents represent that complainant voluntarily entered in transaction with Applicant for a valid consideration.

10] In the aforesaid background, if the execution of power of attorney on 21/03/1991 is appreciated for the purpose of finding out as to whether applicant is involved in the offence in question, the answer could be noticed in Section 85 of the Evidence Act. There is presumptive value to such Power of Attorney which is notarized. The

fact remains that Notary Mr. Sonawane was very much appears to be legally authorized to notarize such documents as he continued in said position till 2008.

11] In the aforesaid background, it is difficult to infer from the record, that applicant is prima facie involved in offence alleged against him which warrants custodial interrogation.

12] As such, case for grant of bail is made out.

(i) In the event of arrest of applicant in crime no. 335/2018 came to be registered with APMC Police Station for offence punishable under Sections 420, 465, 467, 468, 471, 474 and 120(B) of the Indian Penal Code, he be released on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.

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

(iii) The undertaking given by the counsel for the

applicant that originals of all aforesaid documents viz. Power of Attorney, cancellation Deeds in between Arts Constructions and applicant shall be produced before the Investigating Officer within period of one week, if not already produced, is accepted as an undertaking.

(iv) Applicant to attend Investigating Officer from 06/12/2021 to 10/12/2021 between 10.00 a.m. to 12.00 noon and thereafter as and when directed.

13] Application stands disposed of.

[NITIN W. SAMBRE, J.]

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MASHAL

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