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

ANTICIPATORY BAIL APPLICATION NO. 1756 OF 2019

**SANJEEV PRABHAKAR KULKARNI
AND ORS**

....APPLICANTS

V/s.

THE STATE OF MAHARASHTRA

.....RESPONDENT

**Mr. Satyam Nimbalkar for the applicants
Ms. Sharmila S. Kaushik APP for the State**

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 10, 2021.

P.C.:

1] Heard Mr. Nimbalkar for the applicants and learned APP for the State

2] Deceased Baban was blessed with two sons namely Navnath and Rajendra. Navnath married to Mohini. I am informed that they are blessed with two minor daughters. Navnath died in 2010, as a consequence his wife Mohini got married to complainant i.e. brother of Navnath namely Rajendra.

3] Baban was owner of land survey no. 135/9 which is sold vide registered sale deed dated 14/03/2008 in favour of Navnath and one Shashikant. In 2010, Navnath and Shashikant entered into an agreement with accused nos. 1 & 2 and agreed to share developed area in proportion to 65% and 35% in between applicant nos. 1 & 2 and Navnath and Shashikant.

4] Complainant filed Special Civil Suit No. 13/2015 in relation to land survey no. 135/2009 seeking partition and separate possession against his own father Baban, his wife Mohini, two minor daughters of his brother deceased Navnath.

5] Said Suit I am informed is pending adjudication. Complainant Rajendra initiated proceedings under Section 156(3) of Code of Criminal Procedure, 1973 against the applicants before Judicial Magistrate First Class in which, on 19/01/2017, an order came to be passed directing investigation resulting into C.R. No. 27/2017 for offence punishable under Sections 471, 465, 468, 420, 471, 193 r/w

34 of the Indian Penal Code.

6] Applicants preferred pre-arrest bail before learned Sessions Court which is rejected. As such, this application.

7] Mr. Nimbalkar, learned counsel for the applicants would urge that applicant no. 2 Prabhakar Kulkarni has expired and as such, application to that extent has rendered infructuous. He would further claim that alleged offence is based on documents and all the documents are very much available for the investigating agency. That being so, custodial interrogation is not warranted. Learned counsel then would invite attention of this Court to pendency of partition suit, registered sale deed in favour of deceased Navnath and Shashikant executed by Baban, father of the complainant in relation to land bearing survey no. 135/2009 to the extent of 10R, share to the extent of 5R in favour of each of the parties i.e. deceased Navnath and Shashikant, development agreement entered into between said owners i.e. Shashikant and Navnath with applicant nos. 1 & 2 in March 2010 so as to claim that there is hardly any material to infer any offence at the behest of applicants. As such, according to Mr.

Nimbalkar, ad-interim protection ordered by this Court on 09/08/2019 needs to be confirmed.

8] Learned APP submits that allegations are of cheating and forgery. That being so, custodial interrogation of the applicants is necessary.

9] It appears that offence is based on old instances viz. Sale deed of 14/03/2008, development agreement of March 2010. Entire accusation is allegedly based on claim of forgery and the documents are very much available to investigating agency.

10] Apart from above, pending civil suit at the behest of complainant for partition and he having married to the widow of his deceased brother Navnath is not in dispute. It appears that all the transactions were within the knowledge of complainant. Rather, complainant knowing well about same, has married Mohini widow of Navnath. He having realized that he is not getting share from the estate of Navnath, his real elder brother, has proceeded to file complaint case. As such, it is difficult to infer criminal intention on

the part of applicant.

11] In the aforesaid background, claim for custodial interrogation of the applicants cannot be justified.

12] In that view of the matter, ad-interim protection dated 09/08/2019 stands confirmed. Application stands disposed of with following conditions:

(i) In the event of arrest in C.R. 27/2017 registered with Manchar police station, applicants be released on bail on furnishing P. R. bond in the sum of Rs. 25,000/- each with one or more sureties in the like amount.

(ii) Applicants shall attend the Investigating Officer as and when directed.

(iii) Applicants shall not influence the witnesses or tamper with evidence in any manner.

[NITIN W. SAMBRE, J.]