

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

ANTICIPATORY BAIL APPLICATION NO. 2413 OF 2019

Ashok Jairam Gadge ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Prasanna Shahane, h/f Milind Deshmukh, for the
Applicant.

Mrs. S. D. Shinde, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 21st AUGUST, 2021

PC:-

1. The applicant, who is arraigned in CR No.409 of 2019 for the offences punishable under Sections 363, 467, 468, 469, 471, 420, 386, 504 and 506 read with 34 of the Indian Penal Code, 1860 ("the Penal Code") has preferred this application for pre-arrest bail.

2. The gravamen of indictment against the applicant is that the applicant on the strength of a fabricated instrument, purported to have been executed on 2nd July, 2009 by the deceased father of the first informant namely Katod Undru Thackery, who had already passed away on 22nd August, 2005, falsely laid a claim over the compensation in respect of the acquisition of the agricultural land bearing Gat No./Survey

No.149/40 and when the first informant protested the applicant committed the offences of abduction, extortion and criminal intimidation.

3. By an order dated 6th November, 2019, this Court was persuaded to grant interim relief as a registered instrument was executed by the deceased in favour of the applicant.

4. By a subsequent order dated 30th January, 2020, this Court directed the Investigating Officer to verify the genuineness and correctness of the death certificate, purported to have been issued by Village Officer, Gram Panchayat, Dhasai, Taluka Shahapur, District Thane, certifying that Katod Undru Thackery died on 14th October, 2010.

5. Today, the learned APP has tendered the report submitted by the Assistant Police Inspector, Local Crime Branch, Thane Rural. It reveals that the Investigating Officer has collected the certified copies of the documents namely, the report submitted under Rule 5 of the Birth and Death Registration Rules, and even recorded the statement of the person, who gave the intimation of death. The documents reveal that the intimation of death was given by Mr. Laxman Hema Vishe and the entry was made in the register on 18th October, 2010 that Katod Undru Thackery died on 14th October, 2010. In the face of this record, which carries presumptive value, the very substratum of

the prosecution case that the applicant had got executed a forged and fabricated instrument purported to have been executed on 2nd July, 2009, by the deceased, when the deceased had, in fact, died on 22nd August, 2005, gets *prima facie* dismantled. If the entries made in the Birth and Death Register are to be believed, the deceased died after more than one year of the execution of the said instrument, which being registered also carries presumptive value. Even otherwise, once the allegation of forgery and fabrication of instrument appears to be suspect, the custodial interrogation of the applicant does not seem to be warranted for the purpose of investigation.

6. For the forgoing reasons, I am impelled to allow the application and confirm the interim order.

7. Hence the following order:

: ORDER :

- (i) The application stands allowed.
- (ii) Interim order dated 6th November, 2019 stands confirmed on the terms and conditions incorporated therein.
- (iii) In addition, in the event charge-sheet is filed post completion of investigation, the applicant shall appear in the consequent proceedings before the learned Magistrate regularly.

[N. J. JAMADAR, J.]