

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

CRIMINAL APPLICATION NO. 731 OF 2017

Mrs. Maki Homi Chibber Applicant
v/s.
Majaj Mukhtar Dolare and anr. Respondents

Ms. Vrishali R. Raje for the Applicant.
Mr. P.H. Gaikwad, APP for the State.
Mr. D.N. Atkari, ASI, Palghar Police Station.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 12th OCTOBER, 2021.

P. C. :-

. This is an Application under section 439(2) of Cr.P.C. for cancellation of bail granted to Respondent No.1 vide order dated 05/12/2014 in Bail Application No.297/2014.

2. The Applicant/complainant had lodged the first information report alleging that the Respondent No.1 prepared a fake and fabricated power of attorney based on which he executed a sale deed dated 04/04/1998 in the name of her mother and sold the property under Survey No.4/1 at Mauje Saye to one Siyab Akhalque Patel for consideration of Rs.2,60,000/-. On the basis of the said FIR, C.R.No.I-135/2014 was registered against the Respondent No.1 at Palghar Police

Station for offences punishable under sections 465, 467, 468, 471, 420 r/w. 34 of the Indian Penal Code. The Respondent No.1 was arrested on 14/11/2014 and remanded to police custody. The Respondent No.1 complained of ill health and he was shifted to JJ Hospital. While in the hospital, the Respondent No.1 applied for bail mainly on medical grounds. Upon considering the medical records, the learned Additional Sessions Judge, Palghar granted bail to the Respondent No.1 by order dated 05/12/2014, which is sought to be cancelled by this Application.

3. Ms. Vrishali Raje, learned counsel for the Applicant states that the Respondent No.1 did not appear before the Investigating Officer and did not co-operate with the Investigating Agency. She submits that the presence of the Applicant is required for interrogation and for recovering the power of attorney and other forged and fabricated documents. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant and Shri. Gaikwad, learned APP for the State.

4. The bail order dated 29/11/2014 records that the Respondent No.1 had undergone coronary angiography and the Doctor had recommended bypass surgery. Considering the physical condition of

the Respondent No.1, the learned Judge granted bail with directions to attend the concerned police station as and when directed by the Investigating Officer. The Applicant has sought to cancel the bail after a lapse of over three years. It is also to be noted that the State had also filed an application for cancellation of bail which has been dismissed by the Additional Sessions Judge by order dated 09/06/2017. The State has not challenged the said order. Learned APP states that investigation has been completed and charge sheet has been filed against Respondent No.1 only in respect of offence under section 420 of the Indian Penal Code. It is thus evident that the presence of Respondent No.1 is not required for the purpose of interrogation.

5. Learned counsel for the Applicant states that there is sufficient material to show that the Respondent No.1 is involved in committing offences under Section 465, 467, 468, 471 of the Indian Penal Code despite which no charge sheet has been filed in respect of the said offences. She states that the presence of the Applicant is required for interrogation in respect of the said offences. Suffice it to say that the grievance regarding non filing of charge sheet for other offences cannot be considered in this Application. The bail granted to the Respondent No.1 cannot be cancelled in anticipation that the State will apply for

further investigation and/or on the presumption that the presence of the Respondent No.1 would be required for interrogation in such further investigation.

6. The order of bail is not perverse. Respondent No.1 has not misused the liberty. No grounds are made out for cancellation of bail. Hence, the Application is dismissed.

**PREETI
H JAYANI**

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PREETI H JAYANI
Date: 2021.11.11
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(SMT. ANUJA PRABHUDESSAI, J.)