

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1984 OF 2019

- 1 Arnavaz M. Irani
Age 77 years, Indian Inhabitant,
Occu: Housewife, R/a. F-2,
Kalyan Apartments, 4th Main Chellekere,
Bangalore-560 043.
- 2 Mrs. Annahita R. Kapadia,
Age 52 years, Indian Inhabitant,
Occu.- Service, R/a: 'B' Block, 4th Floor,
Shireen Mansion, Tardeo road,
Mumbai – 400 007.

 $V_S.$

The State Of Maharashtra
(At the instance of EOW Unit-I, Mumbai)Respondent.

WITH

INTERIM APPLICATION NO. 117 OF 2019

IN

ANTICIPATORY BAIL APPLICATION NO. 1984 OF 2019

Taronish Kariman KarkariaApplicant/
(Intervenor)

IN THE MATTER BETWEEN-

Arnavaz M. Irani & Anr.Applicants
Vs.

The State Of MaharashtraRespondent.

Mr. Raja Thakare, Senior Advocate a/w Mr. Chaitanya Kotnis for the Applicants in ABA No.1984 of 2019.

Mr. Ashish Raghuvanshi for the Applicant/Intervenor in Interim Application No.117 of 2019.

Mr. Y.M. Nakhwa APP, for the Respondent-State.

Ms. Archana Hande, API, Unit-3, GC-I, EOW.

CORAM : A. S. GADKARI, J.
DATE : 18th NOVEMBER, 2021.

P.C.:-

This is an Application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in connection with C.R. No. 172 of 2018 originally registered with Gaondevi Police Station, Mumbai for the offence punishable under Sections 465, 467, 468, 471, 420 and 120B of the Indian Penal Code and subsequently transferred to EOW Unit-I, Mumbai having re-numbered C.R. No.72 of 2018.

2 By an Order dated 16th September, 2019, the Applicants were granted interim relief and were directed to attend Investigating Officer as and when called for by the Investigating Officer.

Mr. Nakhwa, learned APP, on instructions submitted that, the Applicants have attended the Investigating Officer and co-operated in the process of investigation.

3 Heard Mr. Thakare, learned counsel for the Applicants, Mr. Raghuvanshi, learned Advocate for the Intervenor and Mr. Nakhwa learned APP for the Respondent-State. Perused record of investigation.

4 The first information report is lodged by Smt. Mani Karkaria (now deceased).

The prosecution case in brief is that, the informant was the owner of a flat, bearing No.39, Shankar Mahal Co-operative Housing

Society, Sophia College Lane, Warden Road, Mumbai. The said property was purchased by her, from and out of her own funds. That, the Applicant No.2 had been to the house of informant and took her signatures on certain papers under the pretext that, the same were to be submitted for the purpose of insurance. The Applicants under some false pretext took the informant to the office of Joint Sub-Registrar of Mumbai City No.1 and got executed 3 different documents namely, a Gift Deed dated 17th June, 2016 bearing registration No.BBE1-5065 of 2016 in favour of Applicant No.1 for 90% of the rights/shares of the said suit flat; a Will of informant dated 22nd June, 2016 bearing registration No. BBE1-5160 of 2016, under which balance 10% of the ownership of the informant of the said flat, was shown to have been bequeathed in favour of the Applicant No.1 and a further Gift Deed dated 3rd October, 2017 bearing registration No.BBE1-4695 of 2017 under which also the balance 10% of the ownership rights of the first informant were gifted in favour of the Applicant No.1. It is alleged that, the said 3 documents are forged and fabricated and by misleading the informant her thumb impression was taken on the said documents. That, the Applicants in connivance with each other have usurped the said immovable property of the informant.

Perusal of FIR and other statements would indicate that, it is the case of the prosecution that under false pretext, the informant was taken to the office of the Joint Sub-Registrar, Mumbai and the said

documents were executed. In this brief premise, present crime is registered.

5 Learned Advocate appearing for the intervenor, who claims to be successor in title of the suit flat through Mr. Kariman Karkaria in whose favour an alleged last Will and Testament dated 1st April, 2019 was executed by the informant, wherein the informant had bequeathed all her rights in the said suit flat, submitted that, the Applicant No.1 by taking undue advantage of the fact that, she being real sister of informant got the said documents clandestinely executed. He further submitted that, at the time of executing of the said documents, the informant was aged about 85 to 86 years and therefore it was not possible for her to go to the office of the Sub-Registrar at Mumbai and execute the said documents in question. He submitted that, a man/woman of common prudence will not transfer rights in a immovable property in 2 phases, as has occurred in the present case i.e. 90% at the first instance and balance 10% at the second instance and therefore it causes grave suspicion about bonafide and genuineness of the execution of the said three documents. He therefore, submitted that, custodial interrogation of the Applicants is very much necessary for proper investigation of the present crime.

6 Perusal of record would indicate that, Applicant No.1 is a woman and aged about 80 years as of today and has reached dotage.

 The Investigating Officer has recorded statement of Ms. Shravani Gaonkar, a witness to the execution of the said 3 documents. The

said witness is an Advocate by profession. In her statement recorded under Section 161 of the Cr.PC., she has categorically stated that, while executing the said documents, the informant was present in the office of Sub-Registrar at Mumbai. As the aforesaid witness has categorically stated that, at the time of execution of the said documents, the first informant was present before the concerned Authority, there is no question of forgery of valuable securities. It thus appears that, the said 3 documents are not forged and/or fabricated and therefore application of Section 467 of the IPC to the present crime is *prima facie* misplaced.

It thus *prima facie* appears that at the most, an offence under Sections 465, 471 and 420 of the Indian Penal Code against the Applicants is made out which attracts maximum punishment of 7 years.

7 As noted earlier, the Applicant No.1 is a woman aged about 80 years and therefore, there is no question of granting her custodial interrogation to the Investigating Agency and she can be protected by pre-arrest bail.

8 As far as Applicant No.2 is concerned, she is also a woman aged about 54 years. The record of investigation indicates that, the Investigating Agency has already seized all the necessary and relevant documents pertaining to the present crime and no purpose will be served by granting custody of the Applicant No.2 to the Investigating Agency and therefore she can also be protected by pre-arrest bail.

9 In view thereof, interim relief granted by Order dated 16th September, 2019 is hereby confirmed.

However, the Applicant No.1 is hereinafter exempted from attending the Investigating Officer.

As far as Applicant No.2 is concerned, she is directed to report to the Investigating Officer as and when called for between 10.00 a.m. to 1.00 p.m. after receipt of Notice in writing in that behalf, till submission of final report.

Application is allowed in the aforesaid terms.

10 In view of disposal of ABA No.1984 of 2019 itself, nothing survives in Interim Application No.117 of 2019 and the same is also disposed off.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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by SANJIV
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Date: 2021.11.26
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