

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.705 OF 2020

(Ramkumat s/o Pabulal Jhangid and others Vs. State of Maharashtra thr. PSO PS
Lakadganj, Nagpur)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. S.P. Bhandarkar with Ms. Sejal Lahani, Advocate for Applicants.
Mr. M.K. Pathan, APP for Non-Applciant 1/State.
Mr. Akash Gupta, Advocate to assist the prosecution.

CORAM: ROHIT B. DEO, J.

DATE: 2nd MARCH, 2021.

Heard.

2. The applicants are apprehending arrest in Crime
688/2020 registered with Police Station, Lakadganj,
Nagpur, for offences punishable under Sections 420, 408,
120-B, 467, 468, 471 of Indian Penal Code.

3. The crime is registered on the basis of complaint
lodged by Mr. Hardik Bharat Parekh.

4. The complaint is in two parts. The first part
pertains to Will dated 23.06.2020 executed by late
Mr. Anantraï Parekh *inter alia* in favour of the applicants 1
and 3. The second part pertains to certain trading
transactions in the Demat account of late Mr. Anantraï
Parekh maintained with M/s. Badjate Stock And Shares Pvt.
Ltd., Nagpur. The complainant alleges that the Will is

fraudulent and forged and that there is no conceivable reason for Mr. Anantrai Parekh, who was the brother of the complainant's grandfather Mr. Ramniklal Parekh, to confer a bounty on the applicants, who were his employees.

5. In so far as the execution of the Will is concerned, the material in the case diary reveals that the Will is purportedly executed in the presence of a senior member of the legal fraternity and then is duly notarized, again before the notary, who is also a practicing advocate. The beneficiaries of the Will are already before the civil Court and an injunction is granted in the civil suit which restrains the defendants including the complainant Mr. Hardik Bharat Parekh from dealing with the property left behind by late Anantrai Parekh. According to the applicants, the complaint was a counterblast to the injunction orders dated 15.10.2020 and 21.10.2020.

6. During the course of hearing, I pin pointedly asked the learned APP Mr. M.K. Pathan to seek instructions from the Investigating Officer as to whether the two senior members of the legal fraternity who vouch for the genuineness of the Will are treated as suspects. Mr. M.K. Pathan states, on instructions from the Investigating Officer, that at this stage, the two senior members of the legal fraternity, who are vouching as to the authenticity of the Will, are not suspects.

7. The learned counsel Mr. Akash Gupta, who

appears on behalf of the complainant would emphasize that the report of the handwriting expert obtained by the complainant opines that the purported signature of late Mr. Anantraï Parekh is forged. Ordinarily, while considering the entitlement to pre-arrest protection, this Court would have refrained from making any observation on the probative value of the material in the case diary. However, since a submission is made which heavily rests on the report of the handwriting expert, suffice it would if the observations of the Apex Court in *Rajeshbhai Muljibhai Patel & Ors. v. State of Gujrat & another (Cri. Appeal 251-252 of 2020 (arising out of SLP 142-143/2019))* which read thus are noted:

21. It is also to be pointed out that in terms of Section 45 of the Evidence Act, the opinion of handwriting expert is a relevant piece of evidence; but it is not a conclusive evidence. It is always open to the Appellant 3-plaintiff to adduce appropriate evidence to disprove the opinion of the handwriting expert. That apart, Section 73 of the Evidence Act empowers the Court to compare the admitted and disputed writings for the purpose of forming its own opinion. Based on the sole opinion of the handwriting expert, the FIR ought not to have been registered. Continuation of FIR No.I-194/2016, in our view, would amount to abuse of the process of court and the petition filed by the appellants under Section 482 CrPC in Criminal Miscellaneous Application No.2735 of 2017 to quash the FIR No. I-194/2016 is to be allowed.

The articulation of the Supreme Court apart, notably the handwriting expert report is not obtained by the Investigating Officer. The report is obtained by the complainant and inexplicably the Investigating Agency appears to have registered the crime heavily relying on the said report. The statements recorded, *inter alia* of two senior legal practitioners belie the report of the handwriting expert.

In *B. Nageswara Rao v. Mavuri Veerabhadra Rao & Ors. AIR 2006 AP 314* the Andhra Pradesh High Court has held that photo-copy of a document cannot be the basis of opinion of a handwriting expert. Similar view is taken by the Madhya Pradesh High Court in *Abhay Jain and others v. State of Madhya Pradesh and Anr. MCRC 431 of 2014*. Considering that the limited issue is whether the applicants have made out a case for pre-arrest protection, I would refrain from making any decisive observation on the probative value of the handwriting expert which is admittedly given on examination of photo-copy.

8. In so far as the second part of the report is concerned, apart from the fact that the stock broker vouches that the transactions were done under the signature of Mr. Anantraï Parekh during his lifetime and suggests that the signature matches with the signature in the database, which is a prerequisite to act upon the delivery instructions, it is revealed from the case diary, that every transaction is duly reflected and recorded in the bank accounts which are

linked with the Demat account. It is not even the case of the prosecution that any amount is withdrawn in cash or is converted or misappropriated or siphoned by any of the applicants. While the learned APP Mr. M.K. Pathan points out that the accounts show an entry reflecting transfer of Rs. 14 lacs and odd to the bank account of applicant 2 Mohanlal, even the said bank account, which is a joint account of applicants 2 and 3, is now seized. The other bank accounts concerned are seized in October, 2020. In this view of the matter, and apart from the fact that the transactions are done under the signature of late Mr. Anantrai Parekh, as appears to be the stand of the stock broker, there is no cash withdrawal from any account and the seizure of the bank accounts effectively protects the interest of the stakeholders. Even if it is assumed, that the amounts generated from the transactions do not belong to the applicants, as is the version of the complainant, the seizure of the concerned bank accounts shall ensure that the interest of whosoever is ultimately held entitled to the assets left behind by Anantrai Parekh, is sufficiently protected. Ultimately, the controversy would be adjudicated by the civil Court.

9. I have not come across any material in the case diary as would suggest that custodial interrogation is necessary. The allegation is that the will is forged. Opinion which the complainant has secured from the handwriting expert is presumably on the basis of photocopy,

if at all. Even the Investigating Officer is not in possession of the original Will which is deposited in the civil Court. As a fact, while this Court was dictating the order, the learned APP Mr. M.K. Pathan states that an appropriate application shall be moved before the civil Court to either obtain custody of the original Will, even if the custody is temporary or for a limited period and then the report from the Government handwriting expert shall be obtained.

10. The applicants have made out a case for exercise of discretion. The interim protection granted vide order dated 10.11.2020 is made absolute with the only modification that till the filing of the charge-sheet, the applicants shall attend the concerned police station and shall co-operate with the Investigating Officer, as and when summoned, with written notice of forty-eight hours.

JUDGE