IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.4 OF 2022

Amruta W/o Abhishek Jain

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.S.B. Ghute Advocate for Applicant.
Mr.N.T. Bhagat, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 3rd FEBRUARY, 2022

ORDER :

1. The applicant is apprehending her arrest in connection with Crime No.9 of 2020 registered with Jalgaon City Police Station, District-Jalgaon, for the offence punishable under Sections 448, 452, 468, 454, 380, 504, 506 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate for the applicant and learned APP for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. Her husband was arrested in connection with same offence and has been released on regular bail. Perusal of the First Information Report would show that the informant is claiming interest in the property merely on the basis of agreement to sell which had allegedly taken place between the father-in-law of the present applicant and the informant. Due to sad demise of father-in-law that sale deed is stated to have not been finalized. But then she states that the mother-in-law, brother-in-law and sister-in-law of the applicant had executed agreement to sell and gave possession of the house to the informant. Unless informant shows that her possession itself is legal, she cannot say that she has been illegally or forcibly dispossessed. There is definitely property dispute between the husband of the applicant and his brother and other relatives. The custodial interrogation of the applicant is not required and the interim protection granted by this Court on 11th January 2022 deserves to be confirmed.

4. Pert contra, learned APP strongly opposed the application and submitted that in the mean time the statement of the witnesses have been recorded. There is also a document which states that a will has been executed by late Sudhir Jain gifting

his property to his wife. Prior to that there was a notarized agreement to sell between Sudhir Jain and the informant. Possession of the suit house was given to the informant about two years prior to the incident. The brother-in-law of the applicant has given statement. Sudhir Jain had made his intention clear that as his son Abhishek i.e. husband of present applicant has performed inter-caste marriage with the applicant, he had no intention to give any property in favour of the husband of the applicant. After death of Sudhir, his widow and another son had arrived at agreement to sell and had given the possession of the property to the informant. Therefore, there are documents on record which would show that the possession of the informant was legal. She was dispossessed by the husband of the applicant, applicant and their children along with two unknown persons. Custodial interrogation of the applicant is necessary since there is clear involvement of the applicant.

5. It appears that the present informant had lodged the report on 12th January 2020 in respect of the incident that had allegedly taken place on 11th January 2020. She makes allegations about taking forcible possession of the suit property. Interesting point to be noted is that in the First Information Report itself she says that she had entered into an agreement to

sell with the father of the husband of the present applicant and she has not given the date of that document. She then says that due to his sad demise the sale deed could not be executed and, therefore, wife of late Sudhir Jain, son Abhinay and daughter Shweta had entered into agreement to sell and gave possession. Again the First Information Report lacks in description the portion of the house, which was given in possession, but then the further statement she has made is that the present applicant, her husband and two daughters were residing at the back side of the house. Again she has not clarified as to whether that portion, which was in possession of the present applicant and her family members, is part and parcel of the property, which was agreed to be purchased by the informant. But then she stated that earlier she has lodged report against the present applicant and her husband on 27th March 2019 vide Crime No.53/2019, for the offence punishable under Section 452, 427, 506, 323 read with Section 34 of the Indian Penal Code. It is also stated that while releasing the husband of the present applicant on bail, condition was put that he shall not enter the house and the place of service of the informant. But then she says that around 6.00 p.m. she could find that the present applicant, her husband and their daughters as well as two other persons had taken forcible possession of the house on 11th January 2020. It also appears that the husband of the present applicant had also lodged First Information Report with the same Police Station on the same day against the informant stating that she along with other persons had unauthorizedly entered the house and damaged their articles.

6. Important point to be noted is that the documents which have been collected up till now appear to be in the form of will executed by Sudhir Jain dated 26th October 2009 but it is only notarized document which states that he is bequeathing his property to his widow. Thereafter there is general power of attorney by Manju Sudhir Jain i.e. widow of Sudhir Jain, in favour of son Abhinay in respect of the property that was bequeathed. If we consider the power of attorney that was allegedly executed, it is dated 13th October 2017. Though the will appears to have been executed on 26th October 2009, Sudhir Jain expired in March 2017. In the First Information Report the informant states that she had entered into agreement to sell with Sudhir Jain but she has not given the date of that document nor it appears that she has produced that document before the police. Statement of Abhinay is silent about execution of any

such agreement to sell by his father in favour of the informant. Then a question will arise that when Sudhir Jain had made up his mind to bequeath that property by executing the said will in 2009 in favour of his wife, then why he would enter into agreement to sell in favour of the informant on a later point of time. Surprising fact from the document of will is that will states that the same has been executed on 26th October 2009 but then the endorsement noted and registered with serial number by notary Pradeep Deshmukh appears to be on 18th August 2016. The prosecution should explain this difference and first of all even the spelling of will is wrong on the head of the document. Statement of Notary Pradeep Deshmukh has been recorded by the Police on 15th March 2020 but he is silent on this document i.e. will dated 26th October 2009. Any way, the will was to come into effect after death of Sudhir Jain and till that date he had every authority to deal with the property. But as aforesaid, the statement of the informant is very much silent and not supported by the document of the agreement between the informant and Sudhir Jain. She specifically states that since Sudhir Jain expired, the sale deed could not be executed and thereafter the agreement to sale has been executed by widow, son Abhinay and daugher Shweta in her favour. Her First

Information Report is also silent as to why she had not taken up any steps for getting the sale deed executed. An impression has been given by her that she has intentionally kept the First Information Report silent in respect of that document between herself and Sudhir Jain.

7. Another fact that has been pleaded by the applicant is that husband of the present applicant has filed Civil Suit No.82 of 2019 before the Civil Court and in that suit, application was filed for giving direction to maintain status-quo by the informant, however, that was rejected. If the informant had proved her possession over the suit house, the Civil Court would have definitely granted at least *status quo* but when that has been rejected and there is no counter statement made by the Investigating Officer in respect of this position of fact, that will have to be accepted.

8. There appears to be cross complaint filed by the husband of the applicant also.

9. Even if we consider the contents of the First Information Report as it is, the physical custody of the applicant is not required for the purpose of investigation and therefore, the

interim protection granted earlier deserves to be confirmed. Hence the following order:-

O R D E R

i) Application stands allowed.

ii) The interim protection granted to the applicant by this Court vide order dated 11^{th} January 2022 stands confirmed. It is clarified that in the event of arrest of applicant – Amruta W/o Abhishek Jain in connection with Crime No.9 of 2020 registered with Jalgaon City Police Station, District-Jalgaon for the offence punishable under Sections 448, 452, 468, 454, 380, 504, 506 read with Section 34 of the Indian Penal Code, she be released on bail on PR Bond of Rs.30,000/- (Rupees Thirty Thousand) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.

iii) Applicant shall co-operate with the investigation.

iv) Applicant shall not tamper with the evidence of the prosecution in any manner.

[SMT. VIBHA KANKANWADI , J.]

asb/FEB22