

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**ANTICIPATORY BAIL APPLICATION NO.544 OF 2021
WITH APPLN/1252/2021 IN ABA/544/2021**

**ARSHAD S/O IBRAHIM HAROON SHAIKH
VERSUS
THE STATE OF MAHARASHTRA**

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**Advocate for Applicant : Mr. Vaibhav B. Kulkarni h/f Mr. Shinde
Ashish B**

**APP for Respondent/State : Mr. V.M. Kagne
Advocate for Assist to PP : Mr. Shaikh Latif**

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CORAM : S.G. MEHARE, J.

DATED : 15th SEPTEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State with learned counsel Mr. Shaikh Latif for the complainant.

2. The applicant is the step-son of the complainant. It is not in dispute that the father of the applicant and the husband of the complainant died on 11.09.2022. He had two wives. The applicant is the son from his first wife. It has been alleged against the applicant that when the complainant had been to the house of the applicant on 11.09.2020, the applicant withdrew the amount from the account of his deceased father by using the ATM card from 18.09.2020 to 23.09.2020. He withdrew the total amount of Rs.1,30,000/-. It has been alleged against the applicant that he has stolen her original

document of marriage i.e. Nikahnama, copy of divorce, ATM card, bank papers, mobile etc. from the house of the complainant in between 11.09.2020 to 14.09.2020. It has also been alleged that the applicant has taken the car of his father forcefully and was not depositing its installment. On the basis of the report lodged on 10.02.2021, the present crime has been registered against the applicant.

3. Learned counsel for the applicant would submit that no incident as such happened. The amount was withdrawn to the knowledge of the complainant since the debt of the medical expenses was to be returned. The applicant had raised a hand loan of Rs.1 lac from his friend and that amount has been returned to him after the death of his father. Therefore, with the consent and knowledge of the legal heirs of the deceased, that ATM was used. Thereafter, the complainant has filed an application for legal heir-ship before the Civil Court at Nanded. The applicant had raised an objection to the said application and claimed that the mother of the applicant has not been divorced. Therefore, she has a right in the property of her husband. The said application was filed on 31.10.2020 and after raising the objection, the present false report has been filed. That apart, the applicant has also the share in the property of the deceased. Therefore, withdrawal of the amount by using the ATM card of his father is no offence. Since there was no Nikahmana and particularly

divorce deed, he has no reason to steal it from the house of the complainant. But to have a legal heir-ship certificate only in the name of the complainant and her children, she has lodged the false report. Hence, he is entitled to the anticipatory bail.

4. Learned APP has strongly opposed the application contending that *prima facie* evidence is available with the prosecution that on 22.09.2020 and 23.09.2020, the applicant withdrew the amount of Rs.1,30,000/- from the bank account of his deceased father by using the ATM. The applicant has also stolen the documents determining the rights of the parties in the proceedings for heir-ship certificate. Therefore, its recovery is essential.

5. The history of the litigation appears that the deceased had two wives. He used to maintain both the wives at separate residence. If the deceased had divorced with the mother of the applicant, he had no reason to go to her home intermittently. It is apparent that the report has been lodged after the objection raised by the applicant in an application filed by the complainant for heir-ship certificate. The report is belated. The allegations levelled in the application itself reveals that the dead body of the deceased was kept in the house where his first wife and the present applicant were residing. This again shows that the relation between his wife and the deceased were cordial and they were living as husband and wife. There is a scope to believe the arguments of the learned counsel for

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the applicant that the present FIR is the outcome of the objection raised by the applicant to the heir-ship certificate filed by the complainant. Considering the facts in totality, there appears substance in the case of the applicant. Hence, he deserves to be protected. Therefore, the following order :

ORDER

- (A) Application is allowed.
- (B) Interim protection granted to the applicant by order dated 28.05.2021 is confirmed on the same terms and conditions.
- (C) Criminal Application No.1252 of 2021 is allowed.

(S.G. MEHARE, J.)

Mujaheed//