

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1092 OF 2022

1. Vijay s/o. Khandu Kakuste,
Age 50 years, Occu. Private Service,
R/o. Sagar Vihar, in front of
Kesharanand Petrol Pump,
Dondaicha, Tq. Sindkhed,
District Dhule
 2. Santosh s/o. Martand Patil,
Age 50 years, Occu. Private service,
R/o. Sagar Vihar, in front of
Kesharanand Petrol Pump,
Dondaicha, Tq. Sindkhed,
District Dhule
- .. Applicants

Versus

1. The State of Maharashtra
Through its In-charge Police
Station Officer,
Dondaicha Police Station,
District Dhule.
 2. The Superintendent of Police,
Dhule.
- .. Respondents

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Mr. Rajendrraa Deshmukkh, Senior Advocate along with Mr. Vishal A. Chavan, Advocate instructed by Mr. Rahul G. Joshi, Mr. Devang R. Deshmukh, Advocate for Applicants;
Mr. K. S. Patil, APP for Respondents/State

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WITH CRIMINAL APPLICATION NO. 2727 OF 2022
IN ABA/1092/2022

Fakherabai Ashikali Bohari,
Age 82 years, Occu. Nil,
R/o. Above Central Bank,
Shivaji Road, Dondaicha,
Tq. Shindkheda, Dist. Dhule

.. Applicant

Versus

1. The State of Maharashtra
Through its In-charge Police
Station Officer,
Dondaicha Police Station,
District Dhule.
 2. The Superintendent of Police
Dhule.
 3. Vijay Khandu Kakuste,
Age 50 years, Occu. Business,
R/o. Dondaicha, Tq. Sindkhed,
District Dhule
 4. Santosh Martand Patil,
Age 50 years, Occu. Agril.,
R/o. Daul, Tq. Shindkheda,
District Dhule
- .. Respondents

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Mr. V. B. Patil, Advocate for Applicant/complainant;
 Mr. K. S. Patil, Advocate for Respondents No.1 and 2/State;
 Mr. Rajendrraa Deshmukkh, Senior Advocate along with Mr. Vishal
 A. Chavan, Advocate instructed by Mr. Rahul G. Joshi, Mr. Devang
 R. Deshmukh, Advocate for Respondents No. 3 and 4.

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**WITH
ANTICIPATORY BAIL APPLICATION NO. 748 OF 2022**

1. Dnyaneshwar s/o. Ananda Bhamre,
Age 60 years, Occu. Business,
R/o. Keshvanand Nagar,
Dondaicha, Tq. Sindkhed,
District Dhule.
 2. Govardhan s/o. Bansilal Modi,
Age 50 years, Occu. Chartered
Accountant, R/o. Plot No. 56,
Krishna Siddhi, Malegaon Road,
Dhule, Tq. And Dist. Dhule
- .. Applicants

Versus

1. The State of Maharashtra
through its In-charge Police
Station Officer,
Dondaicha Police Station,
District Dhule
2. The Superintendent of Police,
Dhule .. Respondents

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Mr. Rahul G. Joshi, Advocate for Applicants;
Mr. K. S. Patil, A.P.P. for Respondents/State.

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WITH
CRIMINAL APPLICATION NO. 2049 OF 2022
IN ABA NO. 748 OF 2022

Fakherabai Ashikali Bohari,
Age 82 years, Occu. Nil,
R/o. Above Central Bank,
Shivaji Road, Dondaicha,
Tq. Shindkheda, Dist. Dhule .. Applicant

Versus

1. The State of Maharashtra
Through its In-charge Police
Station Officer,
Dondaicha Police Station,
District Dhule.
2. The Superintendent of Police
Dhule.
3. Dnyaneshwar s/o. Ananda Bhamre,
Age 60 years, Occu. Business,
R/o. Keshvanand Nagar,
Dondaicha, Tq. SHindkheda,
District Dhule.
4. Govardhan s/o. Bansilal Modi,
Age 50 years, Occu. Chartered
Accountant, R/o. Plot No. 56,
Krishna Siddhi, Malegaon Road,
Dhule, Tq. And Dist. Dhule .. Respondents

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Mr. V. B. Patil, Advocate for Applicant/complainant;
Mr. K. S. Patil, A.P.P. for Respondents No.1 and 2/State;
Mr. R. G. Joshi, Advocate for Respondents No.3 and 4.

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CORAM : S. G. MEHARE, J.

Date of reserving the order : 12-09-2022

Date of pronouncing the order : 29-09-2022

ORDER :-

1. The applicants in A.B.A.No. 748 of 2022 have claimed that the applicant No.1 Dnyaneshwar s/o. Ananda Bhamre is a reputed businessman and was the family friend of the deceased husband of the first informant. Applicant No.2 Govardhan s/o. Bansilal Modi was a Chartered Accountant. The applicants in A.B.A.No. 1092 of 2022 have claimed that they have acted as a witness to the document-in-question. None of them is the beneficiary of the so-called document.

2. The crime bearing No. 0160 of 2022 has been registered against the applicants for the offence punishable under Sections 363, 406, 409, 420, 120B, 467, 471 of the Indian Penal Code and Section 23 of the Senior Citizen Maintenance and Welfare of Parents Act, 2007.

3. In a nutshell, it has been alleged in the F.I.R. that the complainant resides at Dondaicha with her grandson and granddaughter-in-law. Her husband died on 27.3.2021. Abid is her son, and Batulbai is her daughter. Abid has been residing in U.S.A., for the last 20 years with his family. The son did not pay attention to the family. In the last 20 years, he came to see the complainant and her husband about three to four times only. He even did not

come to the funeral of his father. The informant has a huge immovable property at Dondaicha and nearby villages. She resides in a big bungalow situated in the main market at Dondaicha with her grandson and granddaughter-in-law. Her son Abid came to India in February 2022 to Dondaicha. He expressed worries about the health of the first informant. Hence, applicant No.1 Dnyaneshwar told him he would get her examined in his friend's hospital at Dhule. On 10.02.2022, he said to her that accused Dnyaneshwar had called them at his home for lunch. Her son took her to the house of accused Dnyaneshwar at Dondaicha. When she was taking her lunch, two unknown people came near her. She asked them who they were. They told her that they had come from the hospital of accused Dnyaneshwar. Her son told her that after lunch, she would have to fill up the form for medical tests. He obtained her signatures on various papers. Believing in her son, she put her signatures on those papers. Three to four days thereafter, her son again took her, under the garb of medical examination, to the house of accused Dnyaneshwar. He took her to Kesharanand Hospital at Dhule. He again took her on 19.02.2022 to the house of accused Dnyaneshwar at Dhule. On 22.02.2022, she was again taken to Kesharanand Hospital. The Doctor examined her. Her son took her to the hospital of applicant Dnyaneshwar and told her that they would have to go to Mumbai to the Doctor of Brain. She told him she wanted to speak to her

grandson, but her son expressed displeasure. On 25.02.2022, she and her son left for Mumbai in a white colour vehicle of accused Dnyaneshwar. She was asking him to contact her stepbrother, who was a Doctor. But, he did not contact him. Since he was not making a phone call to her stepbrother, they had arguments. Then her son told her they were not going to Mumbai but to Pune to keep her in the old age home. She started raising commotion. Then, he took her to Nandurbar and left her on a square. Before that, he made a call to her daughter and her grandson. She narrated the incident to her daughter and son-in-law. Two days thereafter, she again narrated the incident to her daughter, son-in-law and daughter-in-law Neha. She writes a daily diary. Her grandson inquired with the office of Talathi, Registrar and Municipal Council and told her that her son got prepared a power of attorney and will deed in his name. Then, she confirmed that her son and the applicants in the conspiracy had prepared the false documents under the garb of obtaining her signatures on the medical examination form. All the accused in the conspiracy have prepared those documents intending to grab her residential house and other immovable property. She raised the objections before the Sub-Registrar. He got frightened; hence, he immediately cancelled those documents. In a will, the applicants Dnyaneshwar and Govardhan were shown as executors of the will. She lodged the report in the police station by registered post on 16.04.2022.

However, they did not take cognizance. Hence, she made a complaint to the Superintendent of Police, Dhule, on 26.04.2022. He also did not take cognizance. Hence, she filed a complaint/application before the learned Judicial Magistrate First Class at Dondaicha on 04.05.2022. Meantime, the Police took cognizance and registered the offence.

4. The relations *inter se* between the complainant and her son are not in dispute. The acquaintance of applicant Dnyaneshwar Bhamre with the family of the complainant is also not disputed. It is also not disputed that applicants Vijay Kakuste and Santosh Patil are the employees and partners of applicant Dnyaneshwar. It is also not in dispute that the alleged forged will deed and power of attorney has been cancelled by the appropriate documents. It is also not in dispute that applicant Dnyaneshwar has replied to a public notice issued by the complainant in the newspaper and filed a complaint under Sections 499 and 500 of the Indian Penal Code before the learned Magistrate against the complainant. The applicants have not denied that the husband of the complainant had executed a Will deed in favour of the grandson of the first informant keeping his son aside. It is also not in dispute that a public notice was issued by the applicant Vijay Khandu Kakuste for and on behalf of the son of the complainant through Advocate Pawar, claiming that the grandson of the complainant has prepared a forged will deed in his favour. It is also not in dispute

that applicant Dnyaneshwar Bhamre is a sitting member of Zilla Parishad and has several businesses, including a construction business. of construction.

5. Learned Senior Counsel Shri. Deshmukh, for the applicants, has vehemently argued that it is a dispute between the complainant's family members. The applicants are not the beneficiaries of the document allegedly forged by her son. Applicant Dnyaneshwar was their family friend. He never expressed his desire to purchase the house property during the lifetime of the husband of the first informant. In the alleged forged Will deed, applicants Dnyaneshwar and Govardhan have been appointed as executors of the said Will. They never knew that they were appointed as the executors. Applicant Govardhan Modi has no concern with any business of the complainant and his family. He is a Chartered Accountant for applicant Dnyaneshwar. Hence, he has been falsely implicated in the crime. The Will deed-in-question was cancelled on 14.3.2022; hence, nothing remained to be investigated. Applicant Govardhan Modi was not named in the complaint before the learned Magistrate. But, Police subsequently added him to the first information report. When the application for anticipatory bail was pending before the learned Additional Sessions Judge, a notice under Section 41A of the Code of Criminal Procedure, dated 01.06.2022, was served on applicant Dnyaneshwar. Since he had an apprehension of arrest, he has

submitted his submissions in writing instead of appearing in person. Therefore, he has complied with the said notice. After granting interim protection, applicant Dnyaneshwar attended the police station eight times. Secondly, the investigation was transferred to the Local Crime Branch. Instead of investigating the F.I.R., the Police started making an investigation about his company's accounts and seeking a number of documents. Being a law-abiding person, he has submitted entire account statements of his firm. His income tax return proves that he is well-to-do and never interested in the property of the first informant. He has also produced a certificate from various Chartered Accountants who look after the accounts and projects of his company. That at any point in time, the money was not transferred to the son of complainant Abid; therefore, the suspicion over the complainant that the applicant Dnyaneshwar is behind the curtain and a key person committing the offence proves false. He has referred to paragraph No. 11 of the order of learned Additional Sessions Judge, Dhule in Criminal Bail Application No. 317 of 2022 dated 03.06.2022 and argued that the learned Sessions Judge has recorded a finding that keeping rival pleadings and contentions of applicants/accused, preparation, execution and signing of alleged Will deed by applicants/accused prima facie appears to be doubtful. However, without any material, he concluded that the possibility of threatening the informant, who is an old lady and

prosecution witnesses, can not be ruled out. The applicants/accused had an active role in the present crime. A fair investigation is necessary. The investigation is yet to be completed to the extent of the applicants/accused. He has argued that these are contradictory conclusions. He has vehemently argued that some political interest has entered in. Therefore, the Police sent him various notices to corner him to keep him away from the upcoming local elections. The applicants are unaware that they were appointed as executors of the Will. He has also vehemently argued that the report to the Superintendent of Police was lodged after issuing a public notice in a newspaper and reply of applicant Dnyaneshwar. In a document cancelling the Will deed, no reasons have mentioned. Considering these facts and documents placed on record, he prayed to grant anticipatory bail to the applicants.

6. Per contra, the learned APP for the State has vehemently argued that the Sub Registrar Office is available at Sindhkheda, but with an ill motive and under the influence of applicant Dnyaneshwar, a Will deed and power of attorney was registered at the office of Dondaicha offline. The office of the Sub Registrar had no reason to register a single document offline on that day. A Peon and the Clerk from the office of sub Registrar, Dondaicha, have clearly stated that applicant Vijay Kakuste went to the office of Sub Registrar, Dondaicha and requested to come for the registration of two documents of the complainant at the house of applicant

Dnyaneshwar. Therefore, a Peon was sent to his house. Then, applicant Vijay Kakuste went to the Sub-registrar's office with papers. The employee of applicant Dnyaneshwar brought the stamp paper. The stamp paper also stated this fact. In view of these facts in toto, there are strong circumstances against the applicants that the applicant Dnyaneshwar had an intention to purchase the house property of the complainant situated in the heart of the city. The applicant Dnyanehsvar did not appear before the Police when the first notice under Section 41A of Cr.P.C. was issued. He was avoiding appearing before the Police. Considering the nature of the offence and the influence of applicant Dnyaneshwar Bhamre, there is no possibility of fair investigation; hence, the applicants are not entitled to anticipatory bail.

7. Mr. Patil, the learned counsel for the complainant addressing the court, has vehemently argued that considering the past, the complainant had no reason to execute any document in favour of her son Abid. Instead of bequeathing property to his son, her husband bequeathed it to his grandson. The complainant has executed a Will on 20.12.2021 of Gat No. 146/1/A of Mouje Tembhe (Budruk) in favour of her daughter Batul. Referring to the Will deed in question, he has vehemently argued that the land already bequeathed to her daughter by the complainant was also included in the forged Will deed. The complainant has no reason to contend in the said document that she never before executed a Will. She

has no reason to write against her grandson, who was taking her care. The contents of the Will deed have been written suitable to the desire of applicant Dnyaneshwar. He had an ill eye on the property situated in the market, which was worth more than Rs.50 Crore. He has also referred to the medical fitness certificate attached to the Will deed-in-question and vehemently argued that the date "22.07.2019" has been scored and another date "08.02.2022" was inserted. The Medical Officer of village Malpur issued the said medical fitness certificate. When the hospital and Doctors were available at Dondaicha, she had no reason to go for a medical fitness certificate at Malpur. He has also vehemently argued that in the said fitness certificate, a tattoo mark was shown on the right thumb of the complainant. However, in the investigation, it has been transpired that there is no tattoo mark on her right-hand thumb. This circumstance proves that under the influence of applicant Dnyaneshwar, a forged medical fitness certificate was prepared. In the office of the Sub-Registrar at Sindkheda, on the day of the alleged Will, a single document was registered offline, and applicant Dnyaneshwar managed it. The said documents were executed at the house of applicant Dnyaneshwar. When the Will deed was executed, there was no reason to execute a power of attorney in favour of the son of the complainant. It was done solely to protect the interest of applicant Dhnyaneswar, who was interested in purchasing the house

through her son. Exactly, the same thing happened, and applicant Vijay published a public notice in the newspaper for and on behalf of Abid. That shows the ill intention of all the accused. Applicant Dnyaneshwar and Govardhan Modi are neither relatives nor of the complainant's religion. Therefore, she had no reason to appoint them as executors of the said Will. But, this has been done systematically to plot a plan to grab the house property of the complainant. He further argued that accused No.2 is the son-in-law of applicant Dnyaneshwar and his business partner. So, care has been taken that there shall be a witness from his family. Applicant Dnyaneshwar is a sitting member of Zilla Parishad from B.J.P. He did not respond to the notice under Section 41A of Cr.P.C. Therefore, he cannot claim bail because he attended the Police Station on many occasions. In view of the entire circumstances, there is ample material to link the applicants in committing the crime as alleged. He prayed to reject the application.

8. In reply, the learned senior counsel, Mr. Deshmukh referred to para 4 of the application of applicant Vijay and argued that the son of the complainant informed them that his mother wishes to execute the Will in his favour and his sister. Therefore, considering their old and close relationship, they helped him. Referring to his additional affidavit, he has vehemently argued that the Police also started an investigation about his wife, sons and daughter, who have no concern at all with the allegations. In such a way, the

Police have misused their powers and acting under the influence of the political opponents of the applicant. The Police are conducting a fishy investigation. Considering the attendance given by the applicants and documents supplied to the Investigating Officer by applicant Dnyaneshwar, his custodial interrogation is not essential.

9. Perused the papers submitted by Investigating Officer, the applicants and the complainant. The allegations levelled against the applicants have been discussed in the above paras.

10. The arguments of the learned A.P.P. and the learned counsel of Mr. Patil addressing the complainant revolves around applicant Dnyaneshwar.

11. The applicant, Dnyaneshwar, did not deny that the complainant's son brought her to his house and hospital. The statement from the employees of the office of Sub Registrar, Dondaicha, indicates that applicant Vijay Khandu Kakuste went to the office of Sub Registrar and brought a Peon. He got the document prepared at the house of applicant Dnyaneshwar. Then, applicant Vijay Kakuste went to the office with those papers and got them registered. Their statements show the connection of applicant Dnyaneshwar in executing the alleged forged Will deed and a power of attorney. Publishing a notice in the newspaper for and on behalf of the son of the complainant by applicant Vijay Khandu Kakuste is another incriminating circumstance against him and applicant Dnyaneshwar. *Prima facie*, it appears that the

complainant had no reason to secure the medical fitness certificate from Primary Health Center at village Malpur when the medical facilities were available in her town itself. The absence of a tattoo mark on the right-hand thumb of the complainant is also serious. Since she did not reside in India for more than 20 years, he couldn't get such a certificate. The applicant Dnyaneshwar has admitted that he was the family friend of the complainant and her husband. Had she intended to execute the Will in favour of her son, she would have executed at Dondaicha itself. Another strong circumstance in favour of the prosecution is why the forged Will deed and power of attorney were registered offline. The prosecution has good reason to doubt that it was done under the influence of applicant Dnyaneshwar. He is a politician and a rich person. He also has the construction business, so there is scope to draw a safe inference that he had good contacts with the office of the Sub Registrar. The Investigating Officer has also collected the material that a man of applicant Dnyaneshwar had purchased the stamps for the complainant. This is another incriminating circumstance against the applicant Dnyaneshwar that he had managed everything.

12. Applicant Dnyaneshwar did not respond to the notice under Section 41A of Cr.P.C. when he was called for the first time before granting him interim protection. The prosecution has a suspicion against applicant Dnyaneshwar that a huge unaccounted

monetary transaction took place between him and the son of the complainant for her valuable immovable property. The serious aspects are to be investigated in the crime. Considering the conduct of the applicant Dnyaneshwar and his influence with money power, the prosecution has a good case that he may influence the witnesses and not allow a fair investigation.

13. As far as applicant Vijay Kakuste is concerned, he is an employee of applicant Dnyaneshwar. He has played an active role in getting executed the alleged forged Will deed and power of attorney offline in the office of the Sub Registrar. Considering the entire circumstances, it appears that he was present throughout the incident.

14. There are no specific allegations against applicant Santosh. As far as applicant Govardhan Modi is concerned, his name appears as executor of the Will in the alleged forged will deed. Except for this, there are no allegations against him. He is not the witness to the document. He even was not named in the complaint lodged before the learned Magistrate. He is a Chartered Accountant for applicant Dnyaneshwar. Considering the role attributed to applicants Santosh Patil and Govardhan Modi, they are entitled to anticipatory bail.

15. As far as the role played by applicants Dnyaneshwar Bhamre and Vijay Kakuste, there is ample evidence against them. A thorough investigation is required to be made against them.

Applicant Dnyaneshwar as discussed above is an influential person. He may tamper with the prosecution evidence or induce any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the police officer. Therefore, they cannot be released on anticipatory bail.

16. In that view of the matter, the following order is passed:-

- i) Anticipatory Bail Applications No. 748 of 2022 and 1092 of 2022 are partly allowed.
- ii) The interim protection granted to applicant No.2 Santosh s/o. Martand Patil, in A.B.A.No. 1092 of 2022, by order dated 17.08.2022 and interim protection granted to applicant No. 2 Govardhan s/o. Bansilal Modi, in A.B.A.No. 748 of 2022, by order dated 16.06.2022, is confirmed on the same terms and conditions.
- iii) The applications of applicant No.1 Vijay s/o. Khandu Kakuste in A.B.A.No. 1092 of 2022 and applicant No.1 Dnyaneshwar s/o. Ananda Bhamre in A.B.A.No. 748 of 2022, stand dismissed.
- iv) For the reasons stated in the applications, Criminal Applications No. 2727 of 2022 and 2049 of 2022 stand allowed.

**(S. G. MEHARE)
JUDGE**

17. At the request of the learned counsel for the applicants, the *interim* protection granted to applicant No.1 Vijay s/o. Khandu Kakuste in A.B.A.No. 1092 of 2022 and applicant No.1 Dnyaneshwar s/o. Ananda Bhamre in A.B.A.No. 748 of 2022, is extended for three weeks from today.

(S. G. MEHARE)
JUDGE

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