

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 579 OF 2022

Mubin Sahabuddin Gothe ..Applicant

V/s.

The State of Maharashtra ..Respondent

Mr. Owais Pechkar for the Applicant.

Mr. Y.Y. Dabke, APP for the Respondent/State.

PN P.S. Jadhav, Chiplun Police Station present.

CORAM : C.V. BHADANG, J.

DATE : 3 MARCH 2022

P.C.

. The Applicant (accused No.3), apprehending his arrest, in connection with the investigation of Crime No. 289 of 2020 registered with Chiplun Police Station, Dist. Ratnagiri under Section 417, 418, 419, 420, 465, 466, 467, 468, 471, 474 read with Section 34 of IPC, is seeking anticipatory bail.

2. The aforesaid crime is registered on the basis of the complaint lodged by Smt. Navaz Gulam Mohiddin Mukadum on 16.12.2020. According to the informant, accused No.2 Iyesha Mehraj Khan in collusion with accused No.1 and 3 to 7 got prepared a forged power of attorney in the name of her step mother Smt. Hawabi Gulam and three step sisters Firoza Karamat

Mamtule, Kamurnissa Barmare and Farzana Parkar and on that basis got executed a forged sale deed dated 31.03.2017 of their properties and has thus, cheated them. In this case, the informant had filed an application under Section 156(3) of Cr.P.C. before the learned Judicial Magistrate First Class, Chiplun and on the basis of the direction given, the offence came to be registered. The present Applicant, who is accused No.3, is a witness on the said sale deed.

3. According to the prosecution, the Applicant has helped the accused No.2 in preparation of the forged power of attorney and subsequent execution of the sale deed on the strength thereof.

4. I have heard learned counsel for the parties. Perused record.

5. It is submitted by the learned counsel for the Applicant that the dispute is of a civil nature, which is being projected as an offence of cheating. It is pointed out that the Applicant is not beneficiary of the transaction of the sale deed dated 31.03.2017. It is pointed out that the Applicant is merely a witness and cannot be said to be a beneficiary of the transaction. It is pointed out that the Applicant was working abroad and was not present at the time of the execution of power of attorney dated 30.04.2009. It is submitted that the Applicant has no criminal antecedents against him and he is ready to co-operate with the investigation.

It is submitted that the Applicant is ready and willing to pay back the consideration of the sale deed.

6. The learned APP has submitted that the offence is serious in which a sale deed is executed on the basis of a fabricated power of attorney in which the Applicant is the witness on the sale deed and which shows his active indulgence in the offence along with co-accused, which requires investigation.

7. I have considered the circumstances and the submissions made.

8. Admittedly, the Applicant has signed as a witness on the sale deed of the year 2017, which is executed on the strength of the power of attorney of the year 2009, which is found to be false and fabricated. The learned Sessions Judge has noticed that there are statements of witnesses whose names appear on the power of attorney disputing their signatures. The learned Sessions Judge has also found that there is an entry about a tenant in the revenue record of land which is subject matter of the sale deed and his consent is not obtained. That apart, it has been noticed that during investigation, it has been found that certain amounts are transferred by the purchaser in the account of the Applicant and his wife. If that be so, it cannot be accepted that Applicant is not beneficiary of the transaction. It is necessary to note that although the Applicant claims that he was abroad, on the date of

the execution of the power of attorney, the fact that he has signed as witness on the sale deed is not disputed. In such circumstances, the custodial interrogation of the Applicant is warranted for proper investigation of the offence. No case for grant of pre-arrest bail is made out. Consequently, the criminal application is rejected.

(C.V. BHADANG, J.)