

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

ANTICIPATORY BAIL APPLICATION NO.2551 OF 2021

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Shabbir Mohammed Shakoor Shaikh

..Applicant

Versus

State of Maharashtra

..Respondent

Mr. Bhushan Raut, for the Applicant.

Ms. Sharmila S. Kaushik, APP for the Respondent/State.

CORAM : NITIN W. SAMBRE, J.

DATE : 26th SEPTEMBER, 2022

PC.

1. Applicant is seeking pre-arrest bail in Crime No.830 of 2021 registered with Kondhwa Police Station, Pune City for the offence punishable under Sections 395, 420, 427, 323, 504, 506 r/w 34 of IPC.

2. Subject matter of the crime is small piece of plot which was owned by the joint family. It is the case of the prosecution that the plot being Survey No.50/3/7/1 was initially purchased in the name of applicant along with his mother Fatimabi, who expired on 12th October, 2007. Deceased Fatimabi was survived by legal heirs, amongst other complainant's husband, namely Sajid one of the son. After the death of Sajid, complainant has claimed that the applicant has demolished the structure, dispossessed the complainant and removed her belonging resulting into registration of offence. The contention of counsel for the applicant that though it is claimed in the FIR that the suit property was sold by the applicant, such transaction was cancelled by the order of Tahsildar. According to him, the fact that the complainant has share in

the suit property is disputed by the applicant to the extent of she being succeeding to the share of her deceased mother-in-law but to the share of Sajid her husband. Attention of this Court is invited to the notice issued by the complainant's lawyer way back in 2010. He would further urge that complainant has never resided in the suit property, as after death of Sajid on 22nd October, 2009, the complainant along with her children was residing at her parental home. It is further alleged that the complainant has expired on 14th July, 2022. In the aforesaid background, the claimed that custodial interrogation of the applicant is not warranted.

3. APP would rely on the allegations in the FIR to the extent of offence of theft punishable under Section 395 of IPC, which according to him, warrants custodial interrogation of the applicant for theft of belongings.

4. I have appreciated the submissions.

5. Once the complainant having conceded the fact that she was residing with her parents as reflected in the notice issued in 2010, which is produced on record by the applicant, it is difficult to digest the case of the prosecution that the complainant was enjoying the suit property and stored her belongings as claimed in FIR. The fact that applicant has accepted the claim of the complainant having share in the suit property and the belated lodging of FIR primarily falsifies the case of the prosecution. The claim that there was theft of belongings of the complainant as such cannot be inferred against the applicant.

6. The statement made by the counsel for the applicant that the

sale transaction in relation to suit property was cancelled is also accepted. That being so, case for grant of bail is made out.

7. In the event of arrest, applicant is directed to be released on bail on furnishing PR bond of Rs.15,000/- with one or more sureties in the like amount.

8. Applicant shall neither influence the witnesses in any manner nor tamper with the evidence.

9. Applicant shall attend the Investigating Officer as and when directed.

10. Liberty to move for cancellation of bail, in case, if applicant issues threats or violates any one of the condition on which the bail is granted.

11. The application as such stands disposed of.

[NITIN W. SAMBRE, J.]