

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

ANTICIPATORY BAIL APPLICATION NO. 2542 OF 2019

Dipti Kiran Panchal Applicant
v/s.
The State of Maharashtra and anr. Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2537 OF 2019**

Nitin Hiralal Parikh Applicant
v/s.
The State of Maharashtra and anr. Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2543 OF 2019**

Murlidhar Amritlal Mehta Applicant
v/s.
The State of Maharashtra and anr. Respondents

Mr. Aniket Nikam with Ms. Shivani Dubey with Mr. Amit Icham with
Mr. Vivek Arote with Mr. P. Toshnival i/b. Mr. Ashish Satpute
for the Applicant in ABA/2542/2019.
Mr. Ruchir L. Tolat i/b. M/s. L.C. Tolat and Co.
for the Applicant in ABA/2537/2019.
Mr. Ashish S. Chavan with Mr. Jayesh Bhosale with
Mr. Chetan R. Sharma for the Applicant in ABA/2543/2019.
Ms. Sharmila S. Kaushik, APP for the State in all ABAs.
Mr. Sandeep Ladda with Ms. Chandani Dewani -
for Respondent No.2 – Internenor in all 3 ABAs.
Mr. Bhairavnath Patil, PSI, EOW, Unit 6, Mumbai.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 14th MARCH, 2022.

P. C. :-

. These are Applications under section 438 of Cr.P.C. are filed by the aforesaid Applicants for pre-arrest bail in C.R.No.25/2019 registered with Economic Offences Wing, Mumbai for offences punishable under sections 465, 468, 471 r/w. 34 of the Indian Penal Code.

2. Heard learned counsel for the respective parties. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the complaint lodged by Roxan Patel, the 2nd divorced wife of Nikhil Jhaveri. Nikhil Jhaveri was first married to Dipti Panchal, the Applicant in ABA No.2542/2019. Their marriage was dissolved and he subsequently married the first informant. They have a son named Ryan Jhaveri born from the said wedlock. The second marriage was also dissolved. Nitin Parikh and Murlidhar Mehta, Applicants in ABA Nos.2537/2019 and 2543/2019 are brothers-in-law (sister's husbands) of Nikhil Jhaveri.

4. Nikhil Jhaveri was the owner of the premises situated at Napean Sea Road, Mumbai wherein the school under the name 'Palm Beach School' was being run. The Applicant – Nitin Parikh filed a suit against Nikhil Jhaveri being Regular Civil Suit No.111/2015 for specific performance of MoU dated 03/02/2005 allegedly entered between Nikhil Jhaveri and his sister Kirti i.e., wife of Nitin Parikh. Said Nikhil Jhaveri engaged M/s. Manilal Kher Ambalal & Co. and signed vakalatnama, which was also signed by Dipti Panchal, the 1st wife of Nikhil Jhaveri as witness. Subsequently, Nikhil Jhaveri filed reply dated 15/07/2015 to Notice of Motion taken out by Nitin Parikh in the said Civil suit.

5. Ryan Jhaveri, the son of the complainant and Nikhil Jhaveri also filed a Suit No.20/2017 against Mr. Rucee Motiwala, who allegedly claimed that he had certain papers with signatures of Nikhil Jhaveri, apprehending that he may dispose of the property on the basis of forged documents. Both these suits are pending adjudication.

6. The first informant filed the FIR against the aforesaid Applicants alleging that they have forged the signature of Nikhil Jhaveri on the MoU, vakalatnama and reply allegedly filed by Nikhil Jhaveri in the

Notice of Motion filed by Nitin Parikh. She claims that Nikhil Jhaveri was suffering from Huntington's Corea disease also known as Huntington's disease which is a neurological disorder and as such, he was not in a position to sign the vakalatnama, reply or to enter into a MoU with his sister – Kirti, the wife of the Applicant – Nitin Parikh. The complainant has accused Dipti, 1st wife of Nikhil Jhaveri and the other Applicants of forging his signature to grab the property of Nikhil Jhaveri.

7. The records prima facie indicate that Nikhil Jhaveri had signed vakalatnama in favour of M/s. Manilal Kher Ambalal & Co. which was also signed by the Applicant No.1 as a witness. Nikhil Jhaveri had also filed a reply which was notarized before the notary M/s. Shaila V. Pathak. The Investigating Agency has not yet recorded the statement of Notary under section 161 of Cr.P.C. Nevertheless, it appears that the Investigating Officer had addressed a letter to her and sought certain information which she has given vide reply dated 20/06/2019 wherein she had stated that she had notarized the affidavit as per the instructions of M/s. Manilal Kher & Ambalal Co., for Nikhil Jhaveri. The said reply was signed in presence of Murlidhar Mehta, Applicant in ABA No.2543/2019. The notary has specifically stated that Nikhil

Jhaveri was in the hospital uniform and that he had signed the documents in her presence and in the presence of the Doctor. She has stated that Nikhil Jhaveri was mentally and physically fit and that the notary register was signed by Rajkumar Katkar in presence of her office colleague.

8. Rajkumar Katkar has also stated in his statement under section 161 of Cr.P.C. that the signature on the affidavit is of Nikhil Jhaveri was obtained in Conwest and Manjula S. Badani Jain Hospital. He has stated that no other lady was present at the time of signing of the said reply. The aforesaid statement prima facie indicates that the reply was signed by Nikhil Jhaveri and rules out presence of the Applicant – Dipti Panchal.

9. The contention of the first informant is that Dipti Panchal, the 1st wife of Nikhil Jhaveri and the other two Applicants, brothers-in-law of Nikhil Jhaveri have forged the MoU and the signatures on the reply with an intention of grabbing his property. A perusal of the reply filed by Nikhil Jhaveri indicates that he had contested genuineness of the MoU as well as the claim of Nitin Parikh. A perusal of the said reply does not prima facie indicate that there was collusion between the

Applicant No.1 and the other Applicants.

10. Be that as it may, Nikhil Jhaveri has since expired. The Application for bringing on record Ryan Jhaveri, as his legal representative has been filed and is pending. The question whether the MoU between Nikhil Jhaveri and Nitin Parikh is genuine or forged, is subjudice before the Civil Court. At this stage, the Applicants cannot be deprived of their liberty in the absence of any prima facie material to substantiate the case of forgery.

11. Furthermore, it is seen that the crime was registered in the year 2019. The Applicants are on interim bail since then. They have co-operated with the investigation and their presence is no longer required for the purpose of investigation.

12. In view of the above, this is not a case which would warrant custodial interrogation. Under the circumstances and in view of discussion supra, the Anticipatory Bail Applications are allowed on following terms and conditions :-

(a) In the event of arrest of the Applicants in

C.R.No.25/2019 registered with Economic Offences Wing, Mumbai, they shall be released on bail on furnishing bail bonds in the sum of Rs.50,000/- each (Rupees Fifty Thousand each) with one or two sureties each in the like amount ;

(b) The Applicants shall report to the Investigating Officer as and when required by the Investigating Agency.

(c) The Applicants shall keep the Investigating Officer informed of their current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

13. The Applications stand disposed of in above terms.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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