

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 503 OF 2023

Suresh Ambadas Prashad ...Applicant

Versus

The State of Maharashtra & Anr ...Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO. 714 OF 2023

Ejaz Khan Sher Khan Pathan ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 595 OF 2023

Rahul Prabhakar Sharma ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. R. S. Deshmukh, Senior Advocate i/by Mr. D. R. Deshmukh, Advocate for the Applicant in ABA/503/2023
Mr. Md. S. Latif, Advocate for the Applicant in ABA/714/2023.
Mr. S. T. Mahajan, Advocate for Applicant in ABA/595/2023.
Mr. G. O. Watamwar, APP for Respondent.

CORAM : R.M. JOSHI, J.

RESERVED ON : JULY 05, 2023
PRONOUNCED ON : JULY 11, 2023

ORDER

1. Applicants apprehend arrest in connection with Crime No. 53 of 2023 registered with Sillod City Police Station, Tq. Silod, Dist. Aurangabad for the offences punishable under Sections 420, 465, 471, 468, 34 of IPC.

2. Informant Komal reported to the police that she along with her siblings were owners of land from Plot No. 116 and 117 from Survey No. 124, Sillod in respect of ancestral property bearing Survey Nos. 124, 125 and 54. She along with her brothers and sisters executed power of attorney on 23.06.2020 in favour of the present Applicants for the purpose of looking after the plots, its sell, etc It is alleged that in November, 2022 when the copies of registration record was obtained it was found that on 04.11.2022 vide sale deed no. 3601/2022 one of the property was sold by making bogus signatories and thumb impressions. It is alleged that her brother Swapnil was pre-deceased but he was shown to be one of the vendors and executors of document. It is also alleged that on the basis of false declaration that none of the signatory to the power of

attorney is deceased, the said sale deed was presented and got registered. On the basis of these allegations, offence is registered against present Applicants.

3. Learned Senior Counsel for the Applicant Suresh and Counsel for other Applicant submit that Applicant – Suresh is real paternal uncle of informant. It is argued that there is no dispute about the fact that the informant and her siblings executed power of attorney on 26.06.2020 whereby Applicants herein were authorised to deal with the said property. It is submitted that the informant had executed writing to the effect that he has surrendered her right, title and interest in Survey Nos. 124 and 125 and therefore, no loss is caused to her by any alleged act by the Applicants. It is submitted that Applicant – Suresh has given 105.22 sq.mtr land from his share to present informant and her brothers and sisters. Thus, according to them this fact shows that question of this Applicant cheating his niece does not arise. It is further sought to be argued that the widow of Swapnil had in fact made no grievance about she being cheated in any manner and in fact she sold the property which came to the share

of her deceased husband Swapnil. It is further argued that in previous communication no grievance was made by informant against applicants but it was against other brother and sisters of her. It is further claimed that all alleged documents are with office of Sub-Registrar and hence, no custodial interrogation of the Applicants is necessary.

4. Learned APP opposed the applications by contending that there is sale deed on record which indicates that same was executed after the death of Swapnil which clearly shows that it is a case of impersonation, forgery and fraud. Reference is also made to the declaration dated 04.11.2022 given by the Applicants to the effect that none of the signatory is deceased, when Swapnil died prior thereto.

5. Though it is argued on behalf of Applicants that the present informant has not suffered any loss due to the alleged fabrication of documents, it is pertinent to note that the sale deed dated 01.11.2022 discloses that it is purportedly signed by Swapnil. The said sale deed was presented for registration by present Applicants along with declaration dated

04.11.2022. In the said declaration, it is specifically stated that none of the signatory to the power of attorney dated 23.06.2020 is deceased. As against this, there is death certificate filed on record which show that Swapnil died on 05.01.2022. It is thus clear that on the date of execution of sale deed Swapnil was not alive. In spite of the said fact, the said sale deed bears not only signature but thumb impression of Swapnil. The present Applicants cannot show any ignorance about the said fact while giving declaration dated 04.11.2022 to the effect that signatory to the power of attorney dated 26.06.2020 which included Swapnil are alive. Applicant – Suresh is real uncle of the deceased Swapnil, and therefore, the knowledge of his death can be certainly attributed to him. It is not the case of the Applicants that he was not in touch with informant and others.

6. Thus, there is *prima facie* material to show that the sale deed dated 01.11.2022 is executed in the name of a dead person. The investigating agency, therefore, is entitled to seek custodial interrogation of the Applicants in order to find out as to the manner

in which the said sale deed was got executed and as to who impersonated the deceased for execution of document.

7. In view of the above, applications stand dismissed.

LATER ON:

1. After pronouncement of the order, learned Counsel for the Applicants seeks continuation of interim relief.

2. Learned APP opposed the said request.

3. Since there is interim relief in favour of the Applicants, the same is continued for a period of four weeks.

(R.M. JOSHI, J.)

Malani