

SA Pathan

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

ANTICIPATORY BAIL APPLICATION NO. 858 OF 2023

Ravindra Arvind Bande & Anr. ... Applicants
V/s.
The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO. 1420 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 858 OF 2023**

Vijay Manohar Bande ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. Kuldeep Patil i/by Mr. Aadesh Konde Deshmukh,
for the Applicant.

Mr. Prasanna A. Bhangale, for the Applicant in IA
No.1420 of 2023.

Mr. Amit A. Palkar, APP for the State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : JUNE 9, 2023

PC.:

1. This is an Application in connection with C.R.No.2123 of 2022 registered with Rajgadh police station for the offences punishable under Sections 468 and 420 of the Indian Penal Code (for short 'IPC').

2. According to the prosecution, the informant's husband passed away on 29th December 2017 due to damage to his liver.

She has one daughter residing with her. They have ancestral agricultural property, one residential property and one business premises in the village of Bandewadi. There is a pending civil dispute in respect of their land. According to her, in 2009, the Applicants got executed the release deed in their favour by obtaining the signatures of the informant and her daughter under misrepresentation. It is alleged that on 6th November 2015, the Applicants got executed the Will deed in their favour. The informant-wife had challenged the Will deed by filling Civil Suit. During the pendency of the Civil Suit, the witnesses filed an affidavit disputing their signatures, alleging that their signatures were obtained under misrepresentation. It is further alleged that the Ex-Sarpanch of village Shriramnagar stated in the meeting dated 19th July 2017 that she was not present in the meeting, and she did not make signatures on the monthly meeting register. Accordingly, the informant filed a report alleging that based on the forged gram panchayat monthly meeting register and forged registered Will deed; the Applicants got their names entered into the revenue record.

3. The Applicants, therefore, applied Section 438 of the Code of Criminal Procedure (for short 'Cr.P.C.') before learned Sessions Judge, Pune, which has been rejected by an order dated 13th March 2023. Aggrieved thereby, the present application has been filed by the Applicants.

4. The learned Advocate for the Applicants submitted that filling such a report is the outcome of a Civil Suit. According to him, Will deed in the question of registered document which

carries rebuttable presumption under Section 114 (e) of the Evidence Act, 1872 and notice to the general public under Explanation I to Section 3 of the Transfer of Property Act, 1882. However, the report was lodged on 9th June 2022. The existence of monthly meetings at Gram Panchayat is not in dispute in the Civil Suit; However, according to the prosecution, the then Sarpanch had not signed the resolution. Therefore, custodial interrogation of the Applicant is not necessary.

5. Learned Advocate for the informant opposed submitting that passing of such forged resolution by the gram panchayat affects substantive rights of the informant in immovable property. The document is ordinarily prepared by a public servant, which has been tampered with and therefore, essential ingredients of evidence under Section 465 of IPC are made out. Two witnesses to the registered Will have stated on oath that they signed on Will under misrepresentation and, therefore, prima facie offence alleged against the Applicant made out.

6. Learned APP opposed granting relief, stating that the custodial interrogation of the Applicant is necessary.

7. I have perused the material on record, including copies of the registered Will deed, the Gram Panchayat meeting extract, and the case diary. On perusal of the material on record, it appears that the Will in question is a registered document which carries a rebuttable presumption under Section 114(e) of the Evidence Act; of course, the rebuttable presumption can be discharged during the trial. It is also true that the said presumption is limited only to

the extent of execution of the Will deed.

8. In so far as the document of resolution of the monthly meeting is concerned, prima facie, it appears that the resolution forms part of the register maintained by Gram panchayat. The question is whether the then Sarpanch had signed resolution or not. In my opinion, custodial interrogation of the Applicants is not required to ascertain the said fact. At this stage, the offence alleged against the Applicants is documentary in nature. The original document of the registered Will deed is in the custody of a competent Court in the Civil Suit, which the investigating agency can consider at the appropriate stage. The register of gram panchayat is also available in the concerned gram panchayat. Therefore, in my opinion, custodial interrogation of the Applicant is not necessary; hence, the following order:

- a) In the event of arrest in connection with C.R. No.2123 of 2022 registered with Rajgadh police station for the offences punishable under Sections 468 and 420 of IPC, the Applicants shall be released on bail on furnishing P.R. bond of Rs.50,000/- each, along with one or two sureties in the like amount.
- b) The Applicants shall remain present before the concerned police station on 12th, 14th and 16th June 2023 between 11:00 am to 2:00 pm thereafter, as and when the investigating officer calls.
- c) The Applicants shall not directly or indirectly make any inducement, threat or promise to any witnesses acquainted with the facts of the case so as to dissuade him from disclosing such

facts to the court or to any police officer.

d) The Applicants shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.

e) The Applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer and the Court concerned and shall not change the residence till the final disposal of the case.

9. The Anticipatory Bail Application stands disposed of.

10. In view of the disposal of the Anticipatory Bail Application, nothing survives in the Interim Application. Therefore, the Interim Application is disposed of.

(AMIT BORKAR, J.)