

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

ANTICIPATORY BAIL APPLICATION NO. 901 OF 2023

Mr. Sanjay Victor D'souza

... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. S.H. Mishra for the Applicant.

Mr. S.V. Gavand, APP for the State.

Mr. Jeetendra Ranawat for the Intervenor.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 27th MARCH, 2023.

P. C. :-

1. This is an Application under section 438 of Cr.PC. filed by the aforesaid Applicant apprehending his arrest in C.R.No.536/2021 registered with Santacruz Police Station, Mumbai for offences punishable under sections 193(2), 199, 200 r/w. 420 of the Indian Penal Code.

2. Heard learned counsel for the Applicant, learned APP for the State and learned counsel for the Complainant. 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 FIR lodged by Melinda D'souza, the sister-in-law of the Applicant herein. It is the case of the prosecution that one Victor D'Souza and his wife Monika Peter D'Souza were the owners of property under C.T. Survey No.1542. It is alleged that though the Applicant is only one of the heirs of said Victor, he filed an affidavit in the year 2014 before Talathi claiming to be the sole heir of Victor D'Souza and got the property mutated in his name. It is alleged that subsequently in the year 2014-2016, he sold the portion of the said property in favour of Jalaram Enterprises. The Complainant who is also one of the heirs of Victor D'Souza filed the FIR against the Applicant claiming that he has prepared false documents and cheated him.

4. The records prima facie reveal that the previous bail application filed by the Applicant was rejected by the Sessions Court which led to filing of the Anticipatory Bail Application No.585 of 2022. The said application was disposed of by this Court (Coram : M.S. Karnik, J.) by order dated 01/12/2022 with directions to the Applicant to appear before the Investigating Officer. It was observed in the application that in the event the Investigating Officer feels the need to arrest the Applicant, he should give 72 hours notice. It is stated that pursuant to

the said order, the Applicant appeared before the Investigating Officer. Pursuant to the record, the Investigating Officer issued notice of arrest dated 22/02/2023 pursuant to which the Applicant filed the 2nd Application for pre-arrest before the Sessions Court which came to be rejected by order dated 14/03/2023. Hence, the present Application.

5. The records reveal that the affidavit was filed in the year 2014. Pursuant to the said affidavit, mutation entry was effected in the name of the Applicant on 23/07/2015. The said order was challenged by the first informant in Appeal No.331/2016. The same was allowed on 17/12/2016 and the name of the Applicant and others were also permitted to be recorded in the survey record. It is stated that Jonathan D'Souza who also claims right to the property through Monica D'Souza had challenged the order dated 17/12/2016. The said appeal was allowed and the order dated 17/12/2016 was set-aside with directions to the CT Survey Officer, Vileparle to obtain necessary facts and record the names of legal representatives of Monika D'Souza in the revenue record. By order dated 28/01/2021, the CT Survey Officer, Vileparle certified the Mutation Entry No.1390 with further directions to the parties to approach the higher authorities in case they agree.

6. The material on record prima facie indicate that the dispute is of civil nature. Even otherwise, this is not a case which would justify custodial interrogation particularly considering the fact that the affidavit was executed in the year 2014 and sale deeds were also executed in the year 2014-16. In view of the above, the Application is allowed on the following terms and conditions :-

(a) In the event of arrest of the Applicant in C.R.No.536/2021 registerd with Santacruz Police Station, Mumbai, he shall be released on bail on furnishing bail bonds in the sum of Rs.25,000/- with one or two sureties in the like amount ;

(b) The Applicant shall report to the Investigating Officer as and when required by the Investigating Officer ;

(c) The Applicant shall not interfere with the complainant and the other witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner ;

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

7. The Application stands disposed of.

PREETI
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JAYANI

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by PREETI H
JAYANI
Date: 2023.03.31
14:49:42 +0530

(SMT. ANUJA PRABHUDESSAI, J.)