

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1592 OF 2023

Gajanan Jagannath Borude	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Harshad Sathe, for the Applicant
Mr. R.M. Pethe, APP, for the Respondent/State.
Mr. A.S. Tapare, API, Lonikand police station present.

CORAM : N. J. JAMADAR, J.
DATE : AUGUST 29, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The gravamen of indictment against the applicant is that the applicant obtained a forged and fabricated registered Power of Attorney purported to have been executed by Herambh Gupchup, the holder of the land bearing survey No. 20 admeasuring 6 H 32R sitauted at Tathwade, Tal. Mulshi, Dist. Pune by setting up an importer as the said Herambh Gupchup had passed away on 13th October, 1961. Under the said Power of Attorney the applicant had allegedly obtained the power to tender the instrument for registration, admit execution thereof and receipt of consideration thereunder.

3. Mr. Sathe, learned counsel for the applicant, submitted that the indictment against the applicant is wholly untenable. First the registered Power of Attorney dated 13th May, 2022 was duly cancelled by the executant vide legal notice dated 15th December, 2022 addressed by one Akshata Jadhav. Thus as of the date of the first information report, which was lodged by the estate agent, there was no subsisting Power of Attorney. Second, according to Mr. Sathe, under the said Power of Attorney, the applicant had not been given the power to alienate the subject land. At best, it empowered the applicant to tender the instrument for registration and nothing more. In the circumstances, the custodial interrogation of the applicant is not at all warranted as the alleged offences revolve around the documents.

4. Mr. Pethe, learned APP countered the submissions on behalf of the applicant. Learned APP strenuously submitted that the investigation has revealed the complicity of the applicant and it has transpired that the applicant had set up a person namely Sathe Mama and got the Power of Attorney executed in his favour, in the name of a dead person. Taking the Court through the statements of the witnesses recorded during the course of investigation, the learned APP urged that, it is the applicant alone, who can throw

light on the manner in which the offences have been committed and the persons privy thereto and for that purpose custodial interrogation of the applicant is warranted.

5. The fact that the land bearing Survey No. 20 stands in the name of Herambh Gupchup is not much in contest. The fact that Herambh Gupchup passed away in the year 1961 is also rather incontestible. The execution of the registered Power of Attorney on 13th May, 2022 wherein the applicant came to be appointed as an agent of Herambh Gupchup to perform the functions stipulated therein is also not put in contest by the applicant. At the hub of the matter is the identity of the person who executed the said Power of Attorney.

6. The submission of Mr. Sathe that since under the Power of Attorney dated 13th May, 2022 the applicant was not empowered to alienate the land, and was merely authorized to tender the instrument for registration, no criminality can be attributed to the applicant, prima facie, does not merit countenance. Further, submission of Mr. Sathe that had it been the intention of the applicant to usurp the land, he would have got a Sale Deed or in the least a power to alienate the land, loses sight of the fact that in a

situation of this nature, where the original holder of the property is dead, the power to tender an instrument for registration on the premise that the instrument has already been executed by the holder, suits the purpose equally.

7. On the aspect of the prima facie complicity of the applicant, the statements of the witnesses recorded during the course of investigation reveal that photograph of the person who executed the Power of Attorney is that of Sathe mama and the said Sathe mama was seen with the applicant by multiple persons at multiple places. In addition, there is a statement of a person to whom applicant offered to sale the said land by showing the allegedly forged Power of Attorney and accepted a sum of Rs. 15 lakhs. The advocate in whose office the draft of the Power of Attorney got prepared also adverted to the fact that all the documents for preparing the said Power of Attorney, including the documents establishing the identity of the executant, were shown and delivered by the applicant. One of the advocates has stated that the applicant represented to him that the executant Herambh Gupchup was the husband of his maternal aunt.

8. The endeavour of Mr. Sathe to draw home the point that since

the said Power of Attorney has been duly cancelled and, therefore, there was no valid and subsisting Power of Attorney on the day of lodging first information report again loses sight of the fact that the offences were allegedly committed on the day Power of Attorney was got executed by impersonating a dead person.

9. In the aforesaid view of the matter, especially in the light of material to show execution of the Power of Attorney constituting the applicant as the agent of the executant who had passed away, a strong prima facie case is made out. The allegations are grave. I find substance in the submissions of Mr. Pethe that it is the applicant alone who can throw light on the circumstances of the case and custodial interrogation is indispensable for an effective investigation. I am, therefore, not persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)