

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO.1648 OF 2023**

Mohammed Fareed Usmani

s/o. Mohd Inam Usmani

...Applicant

vs.

The State of Maharashtra and Another

...Respondents

Mr. M.A. Adenwala, for the Applicant

Mr. M.G. Patil, APP, for the Respondent/State.

Mr. J.S. Tiwari, for Respondent No. 2.

**CORAM : N. J. JAMADAR, J.**

**DATE : SEPTEMBER 11, 2023**

**P.C.:**

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

2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 150 of 2023 registered at Chembur police station for the offences punishable under section 420 of Indian penal Code, 1860 and section 82 of the Registration Act, 1908.

3. Smt. Shahana Siddiquie (the deceased) was the holder of a tenement bearing No. 4164, Tagore Nagar, Vikroli (E), Mumbai. The applicant claimed to be the brother of the deceased. According to the applicant, the deceased had executed a Power of Attorney in his favour on 24<sup>th</sup> September, 2021. Armed with said Power of Attorney, the applicant executed a Sale Deed on 5<sup>th</sup> August, 2022 of

the aforesaid premises in favour of himself. Nilofar Usmani, respondent No. 2 lodged complaint with the Registrar of Assurances that the deceased had not executed any Power of Attorney in favour of the applicant and the deceased had passed away on 16<sup>th</sup> July, 2021, much before the execution of the Sale Deed dated 5<sup>th</sup> August, 2022.

4. After holding an inquiry, the Registrar of Assurances found that the applicant had made a false declaration while executing the Sale Deed that the person who executed the Power of Attorney was alive on the date of the execution of the Sale Deed and the Power of Attorney was not otherwise cancelled. The Sub-Registrar thus lodged the report for the offences punishable under section 420 of Indian penal Code, 1860 and section 82 of the Registration Act, 1908.

5. Apprehending arrest, the applicant has preferred this application.

6. Mr. Adenwala, the learned counsel for the applicant submitted that the applicant had bonafide signed the declaration dated 5<sup>th</sup> August, 2022 without understanding the contents thereof as the said declaration is in Marathi, which the applicant does not follow. In any event, according to Mr. Adenwala, the deceased had conveyed the subject flat to the applicant and she had died issue

less. Since the alleged offence, at any rate, revolves around the documents, according to Mr. Adenwala, custodial interrogation of the applicant is not at all warranted. Thus having regard to the advanced age of the applicant, the applicant deserves to be released on pre-arrest bail, submitted Mr. Adenwala.

7. Mr. Patil, the learned APP and Mr. Tiwari, learned counsel for respondent No. 1 resisted the prayer for pre-arrest bail. It was submitted that despite having been fully aware of the death of the executant, the Sale Deed was got executed fraudulently.

8. It is indisputable that the deceased passed away on 16<sup>th</sup> July, 2021. The applicant, who claimed to be the brother of the deceased, can not feign ignorance about her death. An endeavour was made to assert that the declaration was made without understanding the contents thereof. Had the matter been of making an incorrect declaration, different considerations would have come into play. What exacerbates the situation is the fact that the applicant executed the Sale Deed on the strength of Power of Attorney, purported to be executed on 24<sup>th</sup> March, 2011, in favour of himself. The applicant, thus, donned two hats. One, as a vendor, in the capacity of the Power of Attorney of the deceased executant. Two, as a purchaser in his individual capacity.

9. The alleged fraud was unearthed as the applicant attempted

to get his name registered in the MHADA record. In the intervening period, this Court had granted letters of administration dated 29<sup>th</sup> September, 2022 in favour of respondent No. 2. Moreover, in the Sale Deed, the applicant had allegedly parted with entire consideration on 21<sup>st</sup> March, 2011 itself. A receipt purportedly executed by the deceased seems to have been annexed to the Sale Deed.

10. Prima facie, a strong case is made out against the applicant. Endeavour of Mr. Adenwala to explain the declaration by submitting that the applicant did not know the contents thereof does not merit acceptance as the applicant knew for sure that executant of the Power of Attorney/ the holder of the property had passed away a year prior to the execution of the Sale Deed. The fact that it was a conveyance by the left hand to the right hand, further accentuates the situation.

11. The investigation is, therefore, warranted to ascertain even the genuineness of the documents annexed to the Sale Deed including the receipt allegedly passed by the deceased. The applicant alone would be in a position to shade light. Therefore, the custodial interrogation of the applicant is indispensable. Hence, I am, not inclined 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.)**