

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2836 OF 2022

Vilas Sakharam Phadtare ...Applicant

Versus

The State of Maharashtra ...Respondents

Mr. A. R. Gole a/w. Adv. Vishwali Botle for Applicant.

Dr. Samarth S. Karmarkar i/by Karmarkar & Associates for Intervener.

Mr. A. R. Kapadnis, APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATE : 20th APRIL, 2023

PC.

1. Heard Mr. Gole, learned Advocate for the Applicant and learned APP for the Respondent-State.

2. This Court has already granted interim protection to the Applicant vide order dated 22nd December 2022. Now question is whether it is to be confirmed or it is to be vacated. The present Applicant is a member of Premji Nagar Co-operative Housing Society Limited. The society owns a building which is

constructed on Survey No.98, Hissa No.3B at Alkapuri Pachore, Nalasopara (East), District Thane. The said building was constructed by one Premjibai Kalsara and his wife Prawati Kalsara. They were running the business in the name and style as Premprabha Builders. Land was owned by one Andhalal Patel and Ranchoddas Patel. The said Kalsaras have sold the flats in that building to various persons.

3. There was a power-of-attorney executed by the said Kalsaras to the present Applicant. It was executed on 13th May 1991 (page 48 of compilation filed today). It seems that there is no clear date of execution. On the basis of said power-of-attorney, the present Applicant executed a conveyance in favour of Premji Nagar Co-operative Housing Society Limited.

4. The building owned by the society is demolished by the local authority as it has become dilapidated. The conveyance deed was registered on 20th March 2013.

5. After a gap of 10 years, the first informant who claims to have a development right over a plot of land on which the building was standing contend that the power-of-attorney

executed by two Kalsaras is forged one. It is for the reason that on the date of alleged execution of power-of-attorney on 13th May 1991, one of the donor of power-of-attorney i.e. Premjibai has already expired on 25th March 1991. The first informant is having a death certificate to that effect. There is further grievance that when the conveyance deed was executed on 20th March 2013 on the basis of said power-of-attorney, even another donor of power-of-attorney Smt. Prawati Kalsara has also expired. She expired on 21st November 2006.

6. He claims that majority of the members of such society have contacted him and appointed him to develop the land and during enquiry, he got knowledge about this forged power-of-attorney and conveyance deed executed on its basis that is why he lodged a complaint with Achole Police Station, Thane and offence came to be registered under Sections 420, 467, 468, 471 read with 34 of the Indian Penal Code, 1860. Apart from the Applicant, there are nine unknown accused persons described in the F.I.R.

7. Learned APP contend that when Premjibai has already expired, how come this Applicant got executed a power-of-attorney in the year 1991 and how come he can execute a conveyance deed in the year 2013 in favour of the society, when both the donors of power-of-attorney have expired. According to him, this conduct smells foul play. According to him, the members of the society who were earlier residing the building has now shifted to various places and the investigating agency is finding it difficult to trace them and that is why even the assistance of first informant is sought.

8. On the basis of these facts, question is whether the custodial interrogation of the Applicant is required. After hearing them and after perusing the documents, I am inclined to confirm the interim protection. It is for the reason that the conveyance deed is not executed in favour of the present Applicant only, but it is in favour of the society and is signed by the other office bearers also. So, it cannot be said that power-of-attorney was utilized for gaining some personal advantage. No doubt it is true that premjibai was not alive on the date of

execution of power-of-attorney. But yet the Police have not ascertained about the signature of Premjibai on the said power-of-attorney. It can be verified and ascertained from hand writing expert by sending him this disputed signature of Premjibai and other admitted signatures of Premjibai which can be made available through investigation. His opinion can throw much light.

9. It is important to note that even though this power-of-attorney was executed in the year 1991 and conveyance deed was executed in the year 2013, for all 10 years, no one has come forward to make this grievance. This has cropped up particularly when a new developer has come into picture. It is true that Premjibai cannot execute the power-of-attorney on 13th May 1991, when he was already dead, but I am not considering the said factor for vacating the interim protection simply for the reason that this complaint is filed after so many years.

10. Even after confirming the anticipatory bail, Police can certainly go on with the investigation and by giving attendance, Police can certainly proceed with the investigation. So, case of

confirmation is made out. Hence, the following order is passed:-

ORDER

- (i) The order passed by this Court on 22nd December 2022 is confirmed.
- (ii) Applicant to continue to give attendance to Achole Police Station, Thane on every Saturday from 10.00 a.m. to 12.00 noon until filing of charge-sheet.
- (iii) The Applicant not to threaten prosecution witnesses.

11. It is made clear that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

12. Application is disposed of in the aforesaid terms.

13. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]