

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

ANTICIPATORY BAIL APPLICATION NO. 3380 OF 2022

1. Gautam Gulab Advani
2. Nirmala Gulab Advani
3. Shailesh Gulab Advani

..Applicants

v/s.

The State of Maharashtra .

..Respondents

Mr. Aniket Nikam a/w. Amit Icham i/b. Aashish Satpute for the Applicant.

Mr. Aseem Naphade i/b. Mr. Jitendra Jain for the Complainant.

Mr. S.H.Yadav, APP for the State.

CORAM : ANUJA PRABHUDESSAI ,J.

DATED : 21st APRIL, 2023.

P.C.

1. This is an application under Section 438 Cr.P.C. filed by the aforesaid Applicants seeking pre-arrest bail in Crime No. 271 of 2019 registered with MRA Marg Police Station for offences under Section 420, 465, 467, 468 and 471 r/w. 120B and 34 of the Indian Penal Code.

2. Heard learned Counsel for the Applicants, learned Counsel for the Intervenor and the learned APP for the State. 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

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one Lekhraj Advani, who is the uncle of the Applicant Nos.1 and 3. The First Information Report prima facie reveals that the father of the Applicant Nos.1 and 3 had 70% share in partnership firm -M/s. Gulab Enterprises, whereas the first informant had 30% share. The dispute between the partners led to invoking arbitral clause. During the pendency of the arbitration proceeding, the Applicants produced a Deed of Dissolution dated 29.04.1998. The first informant claims that the said Deed of Dissolution is forged and fabricated. It is further alleged that the MOU dated 7.11.2010 between the Applicants and the co-accused is also fabricated.

4. It is pertinent to note that the First Informant has already filed a civil suit for cancellation of Deed of Dissolution and the MOU and an interim order has been passed inter alia protecting the first informant in respect of the property which is the subject matter of the MOU. It is stated that issues are framed and the suit is pending trial. Considering this aspect, by order dated 5.12.2022, this Court had granted interim protection to the Applicants, with directions to report to the Investigating Office on the dates specified in the order, and further as and when called by the Investigating Officer.

5. Learned Counsel for the Intervenor states that since this is a case of forgery, custodial interrogation is must. He has relied upon the

decision of Hon'ble Supreme Court in ***Maruti Nivrutti Navale vs. State of Maharashtra & Anr. (2012) 9 SCC 235***, in which, on the facts of the case, the Hon'ble Supreme Court has held that custodial interrogation was necessary to bring out all the material and documents.

6. Learned APP contends that the Applicants had not co-operated with the investigation. In ***Santosh Dwarkadas Fafat vs. State of Maharashtra, 2018(1) SCC (Cri) 87***, the Apex Court has observed that *“the purpose of custodial interrogation is not just for the purpose of confession. The right against self incrimination is provided in Article 20(3) of the Constitution. It is a well settled position in view of the Constitution Bench decision in Selvi and Ors. vs. State of Karnataka (2010) 7 SCC 263, that Article 20(3) enjoys an “exalted status”. This provision is an essential safeguard in criminal procedure and is also meant to be a vital safeguard against torture and other coercive methods used by investigating authorities. Therefore, merely because the appellant did not confess, it cannot be said that the appellant was not co-operating with the investigation. However, in case, there is no co-operation on the part of the appellant for the completion of investigation, it will certainly be open to the respondent to seek for cancellation of bail.”*

7. It is not in dispute that the Applicants had appeared before the

Investigating Officer and have been interrogated. Learned APP also concedes that the specimen signature as well as the specimen writing of the Applicants has been taken. The document which is alleged to be forged is produced before the Civil Court in the Suit for cancellation of Deed Dissolution. In such circumstances, learned APP has failed to point out any other aspect which the Applicants were required to co-operate with.

8. Having considered the facts and circumstances of the case, in my considered view this is not a case which would justify custodial interrogation. Hence the interim bail granted by order dated 5.12.2022 is confirmed. The Applicants are directed to report to the Investigating Officer as and when required. The Applicants to co-operate with the investigation.

(ANUJA PRABHUDESSAI, J.)