

Sayali Upasani

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

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KULKARNI

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ANTICIPATORY BAIL APPLICATION NO. 3466 OF 2023

Shamim Mohammed Hanif Masarguppi ...Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. Ashish Patankar with Swaraj Patole, Arundhati M., for
Applicant.

Ms. Anamika Malhotra, APP for State.

Mr. Amit Shete, API, Kondhawa Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 12th DECEMBER, 2023

PC:-

1) Heard the learned Counsel for the applicant and the
learned APP for the State.

2) This application is preferred for pre-arrest bail in
connection with C.R. No. 1016 of 2023, registered with
Kondhawa Police Station, Pune, for the offences punishable
under Sections 420, 467, 468 and 471 read with Section 34 of
Indian Penal Code, 1860 ("the Penal Code").

3) The first informant is the cousin of Smt. Geetanjali Prabhakar Rao, who owns two flats. One of the flats i.e. Flat No. 302, Chandan Garden, NIBM Road, Kondhawa, was given by Smt. Geetanjali on Leave and License to the applicant under the Leave and License agreement executed on 6th March, 2020 for a term of 22 months. Geetanjali died on 10th February, 2022. It transpired that after the death of Geetanjali by setting up an impersonator, the said flat was sold by the applicant under a registered conveyance dated 23rd May, 2023 in favour of Dattatray Sabale for a consideration of Rs.38,00,000/-. The first informant alleged the Adhar Card and other documents were forged. No Objection Certificate purportedly issued by the Co-operative Housing Society was also forged.

4) The learned Counsel for the applicant submitted that as the applicant had taken care of the deceased – Geetanjali, the latter had, during her lifetime, executed a Power of Attorney on 17th August, 2021. It was further submitted by the learned Counsel for the applicant that the applicant had no role in the alleged execution and registration of the Sale-deed dated 23rd May, 2023. Nor the applicant forged the documents as alleged. A suit has been instituted before the Civil Court against the applicant in respect of the said flat.

5) The learned Counsel for the applicant urged, the dispute being of purely of civil nature, custodial interrogation of the applicant is not warranted.

6) The learned APP resisted the prayer for pre-arrest bail. It was submitted that there is overwhelming material to show that the applicant had forged the documents and executed the Sale Deed and had also received consideration from the purchaser. Attention of the Court was invited to the forged documents as well as the statements of the purchaser and the office bearers of the Society. It was urged that the purchaser had credited the amount to the account of the applicant.

7) Indisputably, before the execution of the Sale-deed in question, Geetanjali had passed away. The statement of Datratray Sabale , the purchaser, squarely incriminates the applicant. The purchaser has narrated the circumstances in which the transaction came to be effected including the transfer of the amount to the account of the applicant. Shreeram Purandare, the treasurer of the housing society has also stated that the applicant claimed that she was the Power of Attorney of the deceased and the No Objection Certificate purportedly issued by the Society annexed to the Sale-Deed, was forged and fabricated. It would be suffice to note that the Sale-deed has

been executed by the applicant in the capacity of the Power of Attorney of the Geetanjali.

8) The fact that the suit is instituted against the applicant cannot be pressed into service to urge that the dispute is of civil nature. Element of criminality in the execution of a fraudulent instrument is *prima facie* made out.

9) A strong *prima facie* case of fraud is thus made out. Custodial interrogation of the applicant is indispensable for a complete and effective investigation. The allegations are such that the release of the applicant on pre-arrest bail will prejudicially affect the interest of a fair and effective investigation.

10) I am, therefore, not inclined to exercise the discretion in favour of the applicant.

11) Hence, the following order:-

ORDER

I) The application stands rejected.

II) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]