

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.377 OF 2023

Sandip Prakash Kharat and others Vs. State of Maharashtra

WITH

CRIMINAL APPLICATION (ABA) NO.504 OF 2023

Mangesh Madanrao Tiwaskar Vs. State of Maharashtra

WITH

CRIMINAL APPLICATION (ABA) NO.526 OF 2023

Fahim Afzal Ansari Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri M.N. Ali, Advocate for applicants in ABA 377 & 504/2023.
Shri P.S. Khubalkar, Advocate for applicant in ABA 526/2023.
Shri I.J. Damle, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : AUGUST 17, 2023.

These applications are for anticipatory bail in the event of arrest in connection with Crime No.564/2023 registered with Police Station, Wardha for the offences punishable under Sections 198, 420, 465, 466, 467, 468, 471 read with section 34 of the Indian Penal Code. The applicants are apprehending arrest at the hands of police as the crime is registered on the basis of report lodged by Girish Vinayakrao Nimgaonkar on an allegation that one Vimal Dattatraya Pendase was owner and possessor of house property city survey no.848 admeasuring 119 square meters Nazul Sheet No.66 of Mouza Wardha. It is alleged that the present applicants in collusion with other accused namely Banti Raut prepared bogus and fraudulent will-deed. It is

further alleged that the applicants in Criminal Application (ABA) No.504/2023 Mangesh Madanrao Tiwaskar in collusion with the other co-accused obtained a copy of original Will/Gift-deed of Vimal Pendase from the office of Sub-Registrar, Wardha and on that basis, a fabricated will was prepared. As far as the allegation against the applicant in ABA No.526/2023 namely Fahim Ansari is concerned, it is alleged that he has assisted to prepare the said forged will. On the basis of said report, the crime is registered against the present applicants and other co-accused.

2. As per the contention of the applicants in ABA No.377/2023 namely; Sandip Kharat and Lata Kharat that Lata Kharat was serving as a nurse. She has rendered her services during the last days of Vimal Pendase and therefore out of love and affection she has executed the registered will dated 20.06.1986 in favour of Lata Karat. However, present applicants are implicated falsely in the alleged offence.

3. The said application is strongly opposed by the State on the ground that Vimal Pendase was the owner and possessor of the property city survey no.848 admeasuring 119 square meters, Nazul Sheet No.66 of Mouza Wardha. The present applicant- Manesh Tiwaskar obtained information regarding the aforesaid property and the same was provided to one Ayaz alias Bablu Sheikh. Thereafter, Ayaz Sheikh and Buntty Raut prepared a bogus and fraudulent will. The aforesaid Mangesh in collusion with

other accused persons obtained a copy of the original will of Vimal Pendase from the Sub-Registrar office and on the basis of said will the present forged will was prepared. Thus, said will is prepared for monetary wrongful gain. The investigation papers reveal the involvement of the present applicants in the alleged offence. The investigation as to where the said forged will is prepared is to be carried out as well as the investigation as to the involvement of the other persons is to be revealed from the investigation papers therefore custodial interrogation of the present applicants is required and prays for rejection of the applications.

4. Heard Shri M.N. Ali, learned counsel for the applicants in ABA Nos.377 and 504 of 2023. He submitted that as far as the allegation against applicant no.1 Sandip Kharat is concerned, there is a general allegation that being he is a police person, he got prepared the said forged will in favour of his mother. As far as applicant no.2 Lata Kharat is concerned, the will is executed in her favour. He further submitted that a previous dispute is pending between the parties. Out of that, the present applicants are falsely implicated in the offence. The entire investigation is carried out on the basis of the statement of the co-accused, which is not admissible. As far as both the wills are concerned, both are registered and the investigating officer has already collected the necessary documents. Therefore, custodial interrogation is not required and hence the applications deserve to be allowed.

5. Heard Shri P.S. Khubalkar, learned counsel for the applicant in ABA No.526/2023. He submitted that as far as present applicant – Fahim is concerned, it is alleged that he has prepared the forged will in connivance with co-accused Banti, who is the habitual offender. General allegations are made against applicant – Fahim on the basis of statement of co-accused. There is no other material to connect the present applicant with the alleged offence. As far as custodial interrogation of the applicant is concerned, both the wills are now in possession of the investigating officer. His custodial interrogation is not required and hence he be protected by granting anticipatory bail.

6. *Per contra*, the learned APP vehemently submitted that the entire investigation papers show that the applicant-Sandip Kharat, who is police personnel, with the help of other co-accused obtained the earlier will deed executed by deceased Vimal Pendase and after obtaining the same; prepared the same will in favour of the present applicant – Lata Kharat. The investigation papers further reveal that the said will is prepared and registered in the Registrar's office. Therefore, the possibility of involvement of government officials cannot be ruled out. Therefore, investigation as to the involvement of the government officials is to be revealed, therefore, custodial interrogation of the present applicants is required and hence applications deserve to be rejected.

7. Heard learned counsel for the applicants and learned APP for the State. Perused the recitals of the FIR as well as investigation papers. During the investigation, the investigating officer collected the relevant documents as well as also collected both wills, which were executed in favour of Meera Pendase as well as Lata Kharat. The extract of the property shows that the name of Meera Pendase, as well as Lata Kharat, are appearing in the property record. It further reveals that the entire investigation is carried out on the basis of a confessional statement of the co-accused, which is not admissible. The statement of the witnesses is also recorded by the investigating officer, wherein also the allegation is substantiated and stated that the present applicants are involved in preparing the forged will.

8. After going through the entire investigation papers, it reveals that both wills are registered wills. The applicants alleged to have prepared the will on the basis of original will. The genuineness of the will can be considered by the civil Court. The suit is already pending before the civil Court. As far as the custodial interrogation of the present applicants is concerned, as nothing is to be recovered from them. The genuineness and fabrication of the will is a matter of evidence before the trial Court. At this stage, custodial interrogation of the present applicants is not required as all relevant documents are already in the custody of the investigating agency. Considering the same, the prayer of the present applicants of granting anticipatory bail can be

considered. Therefore, I proceed to pass the following order:

ORDER

- i. The criminal applications are allowed.
- ii. In the event of arrest in Crime No.564/2023 registered with Police Station, Wardha for the offences punishable under Sections 198, 420, 465, 466, 467, 468, 471 read with section 34 of the Indian Penal Code, 1860, applicants – **Sandip Prakash Kharat, Lata Prakash Kharat, Buntty Kisan Raut, Mangesh Madanrao Tiwaskar and Fahim Afzal Ansari**, be released on anticipatory bail on furnishing P.R. Bond in the sum of ₹25,000/- each with one solvent surety in the like amount.
- iii. The applicants shall attend concerned Police Station on every Monday between 10.00 am to 1.00 pm, till further orders.
- iv. The applicants shall furnish their cell phone numbers and addresses with address proof.
- v. The applicants shall not tamper with the prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the crime.

With this, the applications are disposed of.

JUDGE

Signature Not Verified *Wagh*

Digitally Signed By: SURESH RAOSAHEB
WAGH
Personal Assistant to Hon'ble
Judge, High Court of Bombay, Nagpur
Bench, Nagpur.
Signing Date: 18.08.2023