

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

ANTICIPATORY BAIL APPLICATION NO.732 OF 2024

Donal Francis Vaz	 Applicant
Versus	
The State of Maharashtra	 Respondent

Ms. Sushma Mishra, Advocate i/b. Rahul Tripathi for the Applicant.

Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th MARCH, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.103/2021 registered at Vasai Police Station, on 27.2.2021 under sections 420, 465, 466, 467, 468, 471 read with 120-B of IPC.

2. Heard Ms. Sushma Mishra, learned counsel for the Applicant and Ms. Mahalakshmi Ganapathy, learned APP for the Respondent-State.

3. The FIR is lodged by one Robbin Francis Vaz . He is the elder brother of the present Applicant. He has stated that the informant and the Applicant's father Francis had property at village Chobare at Palghar at Survey No.31, Hissa No.2/6 admeasuring 5 Are along with a house built on that area. There was another property at village Dhovali bearing Survey No.1/2902. During lifetime of Francis he made a Will dated 23.1.2014. According to that Will, both the brothers were to get the property at village Chobare in equal shares and the second property was to be given to the Applicant. According to the informant, when the Applicant had gone with his father for registering the Will he had taken their father's signature on a document in the nature of Power of Attorney and it was also registered on 23.1.2014. It is his case that using that Power of Attorney, he had sold 2.50 Ares property in his own name. According to the first informant, this Power of Attorney was obtained fraudulently and, therefore, the subsequent sale transaction was also fraudulent. On that basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that there was nothing fraudulent about the Power of Attorney. The property was transferred by the Applicant by using that Power of Attorney during the lifetime of their father. She submitted that even as per the arrangement, mentioned in the FIR, only the first property was to be shared in equal proportion amongst the brothers and the second property was to be given to the Applicant himself.

5. Learned APP, on instructions of the investigating officer, submitted that at the first instance the investigating officer had filed 'A' Summary before the concerned Magistrate. But, after rejection of the anticipatory bail application by the Sessions Court, a fresh application was made for further investigation into the offence by the investigating agency and the matter is being investigated.

6. I have considered these submissions. First of all, the police officer did not register the FIR. Therefore, the informant had obtained an order under Section 156(3) of Cr.P.C. Even thereafter the police have filed 'A' Summary

meaning thereby the evidence was not detected. Even otherwise, the FIR clearly mentions that the brothers were to share only the first property and the second property was to be given to the Applicant himself.

7. In any case, as submitted by learned counsel for the Applicant, the Applicant had sold part of the other property by using that Power of Attorney during the life time of the father. In this view of the matter, it appears to be a dispute between the brothers for the property.

8. *Prima facie* it is difficult to observe that the Applicant has committed any offence. However, it is not necessary to give a positive finding in that connection. Today, I am only considering the anticipatory bail application.

9. From the foregoing discussion, I am satisfied that the custodial interrogation of the Application is not necessary. He can be protected under Section 438 of Cr.P.C. It is made clear that these observations are made only for deciding this anticipatory bail application. These observations shall not affect their other rights. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.103/2021 registered at Vasai Police Station, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall attend the concerned police station as and when called and shall cooperate with the investigation.
- (iii) Anticipatory Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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