

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

ANTICIPATORY BAIL APPLICATION NO.3249 OF 2023

Bhavesh Vinodrai Doshi Applicant
Versus
The State of Maharashtra Respondent

Mr. Amey Deshpande, Advocate a/w. Mufeez Ansari, Vandana
Bait for the Applicant.

Ms. Pallavi N. Dabholkar, APP for the Respondent-State.

Mr. Ziyad Madon, Advocate a/w. Rima Kharat i/b. Sahil Hirani
for the Intervenor.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th JANUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.152/2016 registered at Malabar Hill Police Station, Mumbai under sections 420, 467, 468, 471 read with 34 of the IPC.

2. Heard Mr. Amey Deshpande, learned counsel for the Applicant, Ms. Pallavi Dabholkar, learned APP for the Respondent-State and Mr. Ziyad Madon, learned counsel for the Intervenor.

3. The FIR is lodged by the Applicant's own sister Rita Shah on 25.11.2016. She has stated that her father Vinodrai passed away on 23.1.1993. In February, 1994 the Applicant told her that their father had executed a Will and the entire property was given to him. He gave her a copy of the Will. The Will was dated 7.1.1993. The informant remembered that on that date the father's health had deteriorated. She herself was present with her father and on that day the riots were going on and, therefore, she clearly remembered the date as on that date the father had vomited blood. On that day, he certainly was not in a position to execute a Will. She got suspicious about the Will. In 1995, the Applicant filed the proceedings for Probate on the Original Side of this Court which resulted in Testamentary Suit No.37/1995. It was decided on 22.7.2016 against the Applicant. It was held that the Will was unnatural and on this basis the FIR is lodged.

4. Learned counsel for the Applicant submitted that the first informant was knowing about existence of that Will

since 1994 and the FIR is lodged in the year 2016. Even after lodging of the FIR, almost seven years have passed, the investigating agency did not feel it necessary to arrest the accused. He submitted that the entire evidence is in the nature of documentary evidence which is already tendered in the Court. He submitted that though the Testamentary Suit was decided against him, the Applicant has preferred an Appeal before a Division Bench of this Court and the Appeal is admitted and pending. Therefore, the question of genuineness of the Will is still *subjudice*.

5. Learned counsel for the first informant invited my attention to the observations made in the order passed in the said Testamentary Suit. He submitted that this Court had observed that the Will was executed in suspicious circumstances. He, therefore, submitted that on the face of it the Will is forged and, therefore, protection cannot be granted to the Applicant.

6. Learned APP, on instructions, stated that the prosecuting agency will be satisfied if the Applicant cooperates

with the investigation. The evidence is in the nature of documentary evidence which is already available.

7. I have considered these submissions. The informant was knowing about the existence of the Will since 1994. The FIR is lodged in 2016 and till today the Applicant is not arrested. After all these years, I do not see any propriety in the custodial interrogation of the Applicant being permitted. As submitted by all the parties, the main evidence is about the Will, which was tendered in the Court. Therefore, all the documents are available for investigation. At this stage, the custodial interrogation of the Applicant will not serve any purpose. As rightly submitted by learned counsel for the Applicant, the genuineness of the Will is also a subject matter of the Appeal preferred by the Applicant before a Division Bench of this Court.

8. Considering all these circumstances, the Applicant can be protected under Section 438 of Cr.P.C. with directions to him to cooperate with the investigation.

9. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.152/2016 registered at Malabar Hill Police Station, Mumbai, 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 cooperate with the investigation.
- (iii) Anticipatory Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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DESHMANE

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