

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 3437 OF 2024**

Mariyambi Bint Banekha @ Mariyambi Bashir Attar... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. Satyavrat P. Joshi a/w. Mr. Ishan Paradkar and Mr. Yash Fadtare for applicant.

Ms. Rutuja Anil Ambekar, APP for respondent-State.

CORAM : MANISH PITALE, J.

DATE : 18th DECEMBER, 2024

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No.0202 of 2024 dated 16.10.2024 registered at Nashik Taluka Police Station, District Nashik Rural, for offences under Sections 420, 465, 467, 468 and 471 read with Section 34 of the Indian Penal Code, 1860.

3. The informant in the present case has made allegations against the accused persons, including the applicant herein, as being involved in suppression and forgery of documents while dealing with immovable property, thereby illegally achieving financial gain and in the process, cheating the informant.

4. At the outset, the learned counsel for the applicant invited attention of this Court to the order dated 22.11.2024 passed by this

Court in Anticipatory Bail Application No.3038 of 2024, whereby three co-accused persons were granted anticipatory bail. It is submitted that although the role of the present applicant can be said to be different from the role of the said co-accused persons, certain observations made in the said order would inure to the benefit of the applicant. It is submitted that in the said order, this Court did take note of the fact that the genesis of the dispute appeared to be civil in nature and that a colour of criminality was sought to be given to the same. Reference was also made to certain revenue proceedings and proceedings pending before the Civil Court.

5. The learned counsel for the applicant further invited attention of this Court to a suit filed by the applicant and her sister seeking relief of declaration as regards ownership of the entire piece of land in which some other individuals had also claimed rights, on the basis of which revenue entries were made in their favour. It is submitted that in the registered document executed thereafter, concerning the said land, the applicant and others had clearly mentioned the cloud upon the title of the entire piece of land and on that basis, it is submitted that there was no suppression and hence, there is no question of forgery and fabrication on the part of the applicant. It is highlighted that the applicant is a 78-year old woman and since the investigation necessarily involves documentary material, her physical custody cannot be justified.

6. On the other hand, the learned APP referred to the documents on record and submitted that the applicant was all along aware about the real facts, particularly the fact that the father of the applicant had other children also from his first wife and yet, the aforesaid fact was suppressed throughout, while entering into the

transaction. It was submitted that the applicant is a beneficiary of the transaction by suppressing vital facts and, in that sense, there is sufficient *prima facie* material to indicate the ingredients of the offences of cheating and forgery.

7. This Court has considered the rival submissions, in the light of the material placed on record. While granting anticipatory bail to the co-accused persons, this Court had made the following observations in the order dated 22.11.2024 passed in Anticipatory Bail Application No.3038 of 2024:

- “7. This Court has considered the rival submissions. The thrust of the allegations in the statement leading to registration of FIR, appears to be against co-accused Mariambee, who is claimed to be the owner of the immovable property. The documents on record show that the aforesaid accused alongwith her sister, had initiated proceedings before the revenue authorities, in the context of mutation entries, in order to claim that they had clear title. The applicants appear to have entered into transaction with the co-accused person on an understanding that the transaction would be completed upon the said co-accused person and her sister obtaining favourable orders in the revenue proceedings.
8. The allegations in the present case do show that the investigation will necessarily have to proceed on the basis of documentary material and at this stage itself, it would be difficult to reach a conclusion that a strong *prima facie* case is made out against the applicants. Therefore, their physical custody is not necessary for effective investigation.
9. There is substance in the contention raised on behalf of the applicant that the present FIR being registered after 3 months of registration of aforementioned earlier FIR, at the behest of applicant No.1, indicates that the subject FIR can be said to be a counterblast and an after-thought. In

any case, the backdrop of civil disputes in the present case, indicates that grievance of individuals that appear to be of civil nature, are sought to be given the colour of criminality as arm-twisting tactics. So long as the applicants are ready to co-operate with the investigation, relief can be granted to the applicants.”

8. In the above-quoted portion of the said order itself, this Court had taken note of the fact that the thrust of the allegations appeared to be against the applicant herein. Therefore, this Court carefully perused the statement of the informant, leading to registration of FIR. It appears that the allegation against the applicant is that despite being aware of the claims of others in the subject land, the applicant proceeded to execute the document in respect of the entire piece of land in the form of the aforesaid registered agreement dated 24.03.2024.

9. A perusal of the documents on record show that the applicant alongwith her sister Sherbano, were together in the revenue proceedings, challenging certain entries made with regard to the said land. It is a matter of record that the revenue proceedings resulted in a favourable order, accepting the contentions of the applicant and her sister, but the same is pending in appeal before the competent authority. It is also a matter of record that the applicant and her sister have together filed the aforementioned suit before the competent authority, claiming the right on the entire piece of land on the basis that the revenue entries were made in favour of the other persons in an illegal manner. It is relevant to note that the aforementioned registered agreement dated 24.03.2024 was executed after the aforementioned civil suit was filed. The said registered agreement specifically mentions about the revenue proceedings as well as pendency of the civil suit and in that sense,

prima facie, it can be said that the relevant facts were revealed in the document itself, when the agreement was executed.

10. The allegations of suppression and consequent forgery to that extent, are blunted in the aforesaid manner. It is also to be noted that pendency of the civil suit and the revenue proceedings do *prima facie* indicate that the nature of the dispute appears to be civil in nature. It also appears that although initially, the applicant and her sister were together in instituting the proceedings, subsequently they have fallen apart and the applicant's sister Sherbano chose to execute certain documents with respect to part of the aforesaid land. This led to registration of FIR against her also.

11. It is to be noted that in the above-quoted portion of the order, this Court had taken note of the fact that the co-accused person Darshan Bamb had also caused a prior FIR to be registered and an observation was made that the subject FIR could be said to be a counterblast and an after-thought. This aspect also inures to the benefit of the applicant.

12. It is undisputed that the applicant is a 78-year old woman. The investigation in the present case necessarily involves documentary material and the applicant has undertaken to co-operate with the investigation. Therefore, this Court is inclined to allow the application.

13. In view of the above, the application is allowed in the following terms:

- (i) In the event the applicant is arrested in connection with FIR No.0202 of 2024 dated 16.10.2024 registered at Nashik Taluka

Police Station, District Nashik Rural, she shall be released on bail on furnishing PR Bond of ₹ 50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

- (ii) The applicant shall remain present before the Investigating Officer on 20.12.2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when called by the Investigating Officer.
- (iii) The applicant shall not tamper with the evidence of the prosecution in any manner. She shall not influence the informant, witnesses and other persons concerned with the case.
- (iv) The applicant shall co-operate with the investigation and also in the proceedings before the trial Court.

14. In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

15. It is also clarified that the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

16. The application stands disposed of.

(MANISH PITALE, J)

Priya Kambli