IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3438 OF 2024

1. Prema Babulal Rathod
2. Meena Ghisulal Jain ...Applicants

Versus

The State of Maharashtra ...Respondent

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- Ms. Iraa Dube Patil a/w Mr. Ramesh Dube Patil i/b Jay & Co., for the Applicants.
- Mr. Sagar R. Agarkar, APP for Respondent.
- Mr. J.P. Bare, H.C., EOW, Raigad

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SHRIKANT SHRINIVAS MALANI

Digitally signed by SHRIKANT SHRINIVAS MALANI Date: 2024.12.18 15:02:34 +0530

CORAM : MANISH PITALE, J.

DATE : 18th DECEMBER, 2024.

P. C. :

1. Heard learned counsel for the applicants and the learned APP for respondent – State.

2. The applicants are apprehending arrest in connection with First Information Report No.0081 of 2024, dated 14th October, 2024, registered at Police Station Dadar Coastal, District Raigad, for offences under Sections 420, 465, 466, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (IPC).

3. The allegation of the informant is that the names of the applicants and two co-accused persons were illegally added by way of mutation in the revenue record, while the rightful owner of the property is the informant himself. It is alleged that the applicants alongwith two co-accused

persons illegally obtained a legal heirship certificate from a competent Court by misleading the said Court and thereupon took advantage of the same for getting such mutation entries done in the revenue record in their favour.

4. The learned counsel for the applicants submits that the applicants are two married women and they are unnecessarily being dragged into this criminal proceeding. It is submitted that this Court while granting relief of anticipatory bail to co-accused person i.e. a stamp vendor in the order dated 11th November, 2024, passed in Anticipatory Bail Application No.2997 of 2024, made some observations which inure to the benefit of the applicants. It is submitted that the informant himself had instituted a proceeding before the competent Court for setting aside of the legal heirship certificate precisely on the ground on which the FIR has been registered. It is a matter of record that on 18th July, 2022, the said proceeding was dismissed for want of prosecution and after more than 2 years the informant has chosen to approach the police for registration of the FIR. It is submitted that the legal heirship certificate issued by the competent Court in favour of the applicants and two co-accused persons is still valid and not set aside by any competent Court.

5. The learned APP submits that the investigation has revealed that in an affidavit filed by applicant No.1 in the proceeding that led to issuance of the legal heirship certificate, a false statement was made with regard to the date

of death of the original owner i.e. the person, who the informant claims to be his father. It is submitted that the documents filed with the proceeding that led to issuance of the legal heirship certificate can therefore, be said to be forged and fabricated, indicating that the applicants and co-accused persons relied upon such forged documents to obtain legal heirship certificate from the competent Court. This sufficiently demonstrates a strong *prima facie* case against the applicants even with regard to serious offence under Section 467 of the IPC. On this basis, it was submitted that apart from the principle of parity not applying to the applicants herein, they do not deserve any indulgence.

6. In order to appreciate the rival contentions, it would be appropriate to refer to the reasons recorded by this Court while granting anticipatory bail to the co-accused person. Although the role of the said co-accused person, being a stamp vendor, is clearly distinguishable, some of the reasons recorded therein can indeed be said to be accruing in favour of the applicants. The relevant paragraph of the said order dated 11th November, 2024, passed in Anticipatory Bail Application No.2997 of 2024, reads as follows:

> *"8. Having considered the same, this Court is inclined to allow the present application, for the following reasons :*
>
> *(a) The role of the applicant along with the co-accused Nos.1 to 4 has been stated on the basis of the version given by the aforesaid Advocate,*

allegedly engaged by the informant and also the two witnesses, who were given the task of taking appropriate action in the light of the alleged illegal mutation of revenue entries. The Advocate evidently has a history of rivalry and quarrels against the applicant, which is evident from the copies of the FIRs placed on record, wherein the said Advocate is an accused and the informants are the wife and sisters of the applicant. The said FIRs were registered prior in point of time when compared to the subject FIR.

(b) The documents on record show that a legal heirship certificate was issued by the Competent Court in favour co-accused Nos.1 to 4 in respect of the said immovable property. The said certificate is dated 4th May 2016 and there is nothing to show that the same has been set aside, in accordance with law. On the contrary, such a proceeding initiated by the informant himself for issuance of legal heirship certificate, resulted in the matter being dismissed for want of prosecution on 18th July 2022, as per an order passed by the Competent Court. In such a situation, to claim that the mutation entry in favour of co-accused Nos.1 to 4 is illegal, prima facie appears to be without much substance.

(c) The applicant being a stamp vendor prima facie

cannot be said to be a beneficiary of the aforesaid illegal act, as his name has not been mutated in the concerned revenue entry and there does not appear to be any material to show any money trail or other benefit accruing to the applicant as a consequence of the aforesaid alleged illegal mutation entry.

(d) The material on record shows that as regards two FIRs registered against the applicant, in one case a NC summary has been filed by the Police and in the other case a closure report has been placed on record. As regards other two criminal antecedents, the existence of the same in itself cannot be a ground to reject the present application, in the light of the fact that the applicant has made out a prima facie case in his favour in the facts and circumstances brought to the notice of this Court."

7. It is obvious that the reason recorded in the above quoted portion at clause (b) of paragraph No.8 inures to the benefit of the applicants. It is an admitted position that the informant himself had initiated a legal proceeding before the concerned Court for setting aside of the legal heirship certificate on the ground that it had been obtained by the applicants and two co-accused persons by committing a fraud on the said Court. It is also an admitted position that the said proceeding resulted in dismissal for want of prosecution

on 18th July, 2022. This clearly discloses the fact that the informant was well aware about the existence of the legal heirship certificate and the claims made by the applicants and the co-accused persons, while obtaining such legal heirship certificate. Yet, the informant chose to approach the police for registration of the FIR on 14th October, 2024, which is more than 2 years after dismissal of the aforesaid proceeding initiated by him for setting aside of the legal heirship certificate.

8. Apart from this, reliance placed by the learned APP on the affidavit filed by the applicant No.1 in the said proceeding when legal heirship certificate was obtained and the documents filed therewith, to claim that such proceeding can be said to be false, is primarily based on the claim of the informant reflected in his statement that led to registration of the FIR. But, the informant had raised such pleas before the very Court that had issued the legal heirship certificate and he chose not to pursue the said proceeding, resulting in dismissal. Hence, the legal heirship certificate still operates in favour of the applicants and the co-accused persons in the absence of the same being set aside by the competent Civil Court. In the face of such facts, the applicants can be said to have made out *prima facie* case in their favour. In any case, they are women and they are ready to cooperate with the investigation.

9. Hence, the application is allowed in the following terms:

(A) In the event the applicants i.e. Prema Babulal Rathod and Meena Ghisulal Jain, are arrested in connection with FIR No.0081 of 2024 dated 14th October, 2024, registered at Police Station Dadar Coastal, District Raigad, they shall be released on bail on furnishing PR Bonds of ₹ 25,000/- each and one or two sureties each in the like amount, to the satisfaction of the trial Court.

(B) The applicants shall remain present before the Investigating Officer on 20th December, 2024, between 10:00 a.m. and 12:00 noon and thereafter, as and when called by the Investigating Officer.

(C) The applicants shall cooperate with the investigation.

(D) The applicants shall not tamper with the evidence of the prosecution in any manner. They shall not influence the informant, witnesses or any other person concerned with the case.

10. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of anticipatory bail.

11. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicants in the present application.

12. The application is disposed of.

(MANISH PITALE, J.)