



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 393 OF 2024

1. Vijay Madanlal Kala,
Age 55 yrs., Occu. Business & Agriculturist,
R/o. Plot No. 167 Kasturi, Vikas Housing Society,
Tilak Nagar, Aurangabad, Dist. Aurangabad,
At present Gupta Layout, Near Dighe Farm House,
Chikhli Road, Washim, Tq. & Dist. Washim.
2. Jitendra Madanlal Chabbda,
Age 54 yrs., Occu. Business & Agriculturist,
R/o. Kusum, Chikhli Road, Washim,
Tq. & Dist. Washim.

...Applicants.

Versus

1. The State of Maharashtra,
Through Officer Incharge,
Police Station Jawahar Nagar,
Aurangabad, Dist. Aurangabad.
2. The Commissioner of Police,
Aurangabad.

...Respondents.

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Advocates for Applicants : Mr. Rajendrraa Deshmukh, Sr. Counsel a/w. Ms.
Meenal S. Deshmukh and Ms. Vikhyati Jain i/b. Mrs. Ashwini A. Lomte
APP for Respondents 1 & 2 : Mr. A.A.A. Khan
Advocate for assisting APP : Mr. V.P. Bakal
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**WITH
ANTICIPATORY BAIL APPLICATION NO. 394 OF 2024**

1. Narendra Madanlal Kala,
Age 65 yrs., Occu. Business & Agriculturist,
R/o. Plot No. 167 Kasturi, Vikas Housing Society,
Tilak Nagar, Aurangabad, Dist. Aurangabad,
At present Gupta Layout, Near Dighe Farm House,
Chikhli Road, Washim, Tq. & Dist. Washim.
2. Aditya Vijay Kala,
Age 25 yrs., Occu. Business & Agriculturist,
R/o. Plot No. 167 Kasturi, Vikas Housing Society,
Tilak Nagar, Aurangabad, Dist. Aurangabad,
At present Gupta Layout, Near Dighe Farm House,
Chikhli Road, Washim, Tq. & Dist. Washim.

...Applicants.

Versus

1. The State of Maharashtra,
Through Officer Incharge,
Police Station Jawahar Nagar,
Aurangabad, Dist. Aurangabad.
2. The Commissioner of Police,
Aurangabad.

...Respondents.

...

Advocates for Applicants : Mr. Rajendrraa Deshmukh, Sr. Counsel a/w. Ms. Meenal S. Deshmukh and Ms. Vikhyati Jain i/b. Mrs. Ashwini A. Lomte
 APP for Respondents 1 & 2 : Mr. A.A.A. Khan
 Advocate for assisting APP : Mr. V.P. Bakal

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**WITH
 ANTICIPATORY BAIL APPLICATION NO. 395 OF 2024**

1. Sachin Subhash Agrawal,
Age 40 yrs., Occu. Business & Agriculturist,
R/o. New IUDP Colony, Near Civil Hospital,
Washim, Tq. & Dist. Washim.
2. Gajanan Narayan Sangwar,
Age 51 yrs., Occu. Agriculturist,
R/o. Kale File, Washim,
Tq. & Dist. Washim.

...Applicants.**Versus**

1. The State of Maharashtra,
Through Officer Incharge,
Police Station Jawahar Nagar,
Aurangabad, Dist. Aurangabad.
2. The Commissioner of Police,
Aurangabad.

...Respondents.

...

Advocates for Applicants : Mr. Rajendrraa Deshmukh, Sr. Counsel a/w. Ms. Meenal S. Deshmukh and Ms. Vikhyati Jain i/b. Mrs. Ashwini A. Lomte
 APP for Respondents 1 & 2 : Mr. A.A.A. Khan
 Advocate for assisting APP : Mr. V.P. Bakal

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CORAM : ARUN R. PEDNEKER, J.**DATED : April 24, 2025**

ORDER :-

1. Heard Mr. Rajendrraa Deshmukh, Senior Counsel a/w. Ms. Meenal S. Deshmukh and Ms. Vikhyati Jain i/b. Mrs. Ashwini A. Lomte for all the applicants, Mr. A.A.A. Khan, learned APP for State/respondent Nos. 1 and 2 and Mr. V.P. Bakal, the learned Advocate assisting APP.
2. The applicants in above applications are apprehending arrest in connection with Crime No. 301/2023 dated 18.12.2023 registered with Jawahar Nagar Police Station, Aurangabad for the offences punishable under sections 379, 467, 468, 471, 406 r/w. 34 of I.P.C.
3. Informant - Aruna Mahendra Kala is the wife of deceased - Mahendra Madanlal Kala. The husband of informant died on 1.11.2019 due to cardiac arrest at Thane, Maharashtra. The husband of the deceased is survived by three daughters, who are married. The deceased was the electrical contractor and doing business by name Kastum Engineer at Aurangabad.
4. The F.I.R. is registered by wife of deceased Smt. Aruna Kala on 18.12.2023. In the F.I.R. she has stated that her deceased husband had three brothers namely Narendra Madanlal Kala (applicant in ABA No. 394/2024), Vijay Madanlal Kala (applicant in ABA No. 393/2024) and Rajendra Madanlal Kala, who died on 1.2.2023. It is stated that the brothers of the deceased had no knowledge about the business of the deceased although they used to help the informant as and when required. It is stated that although Vijay Madanlal Kala has no knowledge of the business of her husband, being brother of the deceased, the informant had kept the keys of the office with him wherein all the business papers including the blank

signed cheques and blank letterhead of the Kustum Engineers were kept. Mr. Abdul Rag, close friend of the deceased had completed all the pending works after his death. After the demise of husband, the informant along with her three daughters had applied for inheritance certificate on 6.1.2020 in Court and the inheritance certificate granted by the Court on 18.2.2020 and the same was received by applicant Vijay Madanlal Kala. However, he refused to give the same to the informant.

5. Later the informant fell unwell and as such, she was with her daughters at Hyderabad. While she was in Hyderabad under treatment, there was some theft in the house of informant at Aurangabad and some important documents have been stolen from her house.

6. In the F.I.R., it is further stated that informant and her three daughters had applied for succession certificate on 17.10.2020 being MARJI No. 909/2020. After three months Vijay Kala and his son Aditya Vijay Kala (applicants in ABA No. 394/2024) had filed objection to the grant of succession certificate to the informant and her daughters. In the said objection, the applicants produced two documents, one is a oral partition recorded on 19.10.2020 on stamp of Rs.100/- and a Will prepared on the letter head of Kaustum Engineers dated 17.10.2019. The will was registered on 19.11.2020 after 11 months of the demise of the husband of the informant with the aid of attesting witnesses Mr. Jitendra Madanlal Chabbda (applicant in ABA No. 393/2024), Mr. Sachin Subhash Agrawal and Gajanan Narayan Sangwar (applicants in ABA No. 395/2024). In the F.I.R. it is alleged that the oral partition which is allegedly transcribed on stamp paper on which signatures are obtained is fraudulent and are fake. As such, the

informant has taken opinion of hand writing expert wherein it is stated that the signatures of the deceased husband of the informant are different on the partition deed than that appearing on the other documents. It is also stated that when asked Mr. Mangesh Shamrao Kale, who was working as a driver in the office of the husband of the informant on being asked about the execution of will deed, he has stated that from 17.10.2019 to 19.10.2019 he was with the deceased and the deceased has not signed on any documents on the said dates. It is thus alleged that the applicants have fabricated the oral partition deed, so also they used the blank signed cheques and blank signed letter heads of Kaustum Engineers kept in the house and prepared the fake will deed. It is also alleged that substantial property of the deceased are sought to be transferred in the name of applicant Aditya Kala (applicant in ABA No. 394). It is alleged that the applicants Vijay Kala and his son Aditya Kala have cheated the informant and her three daughters with the aid of the other applicants.

7. In view of the F.I.R., the applicants had applied for anticipatory bail before the Sessions Court which was rejected by order dated 28.2.2024 and accordingly, the present anticipatory bail applications are filed.

8. Mr. Rajendrraa Deshmukh, learned Senior Counsel for the applicants has made following submissions for grant of anticipatory bail.

- (i) The F.I.R. is filed belatedly and no plausible explanation is given for the delay.
- (ii) Primarily, this is a civil dispute and the validity of the will would be decided by the civil court and this is a purely civil matter and once the validity of the will is decided in one way or other,

then only the criminal aspect will come into the picture.

(iii) The applicants were granted interim protection by the Sessions Court and now interim protection is also granted by this court to the applicants and all the conditions imposed by this Court are complied by the applicants and they have cooperated with the investigation and as such, custodial interrogation of the applicants would not be necessary in the instant case.

iv) The learned senior counsel submits that what is given under the will is a very small part of the property owned by the deceased and it is not the case that deceased has transferred entire property in favour of applicant Aditya Kala son of Vijay Kala.

v) The learned senior counsel submits that the deceased had three brothers (including the deceased four brothers) and amongst the four brothers, there is only one son i.e. Aditya son of Vijay Kala and as such, the deceased wanted to give small part of his property to the only son Aditya in the family of Kala and as such, will deed is not a fraudulent document, manufactured by the applicant.

9. The learned Senior Counsel therefore prays that considering the civil aspect of the matter and the alleged fabricated documents are available and filed before the Court, interim protection granted in favour of the applicants be confirmed.

10. Per contra, Mr. A.A.A. Khan, learned APP and Mr. V.P. Bakal, learned advocate assisting APP submits as under :-

(i) First time the will surfaced in the succession proceedings filed by the informant in June 2020. Immediately the informant filed the complaint to the police, but the same was not registered. Thereafter, the informant applicant under section 156(3) of Cr.P.C. to the J.M.F.C. register the F.I.R. During the pendency of the proceedings under section 156(3) of Cr.P.C., F.I.R. came to be registered and the complaint under section 156(3) of Cr.P.C. of the applicant was rendered infructuous and so disposed of accordingly. Thus, it is submitted that the complaint is made expeditiously.

(ii) The learned counsels submit that perusal of the will itself would indicate that the will is prima facie fraudulent document and all the liabilities are fasten upon the informant whereas the properties without encumbrance are taken away by the applicants under the will.

(iii) The learned APP, so also the learned advocate assisting APP by pointing out the paragraphs in will deed submit that it is unlikely that in absence of any grievance or family dispute between the family members, the will is made by the deceased, leaving aside nothing and fasten only liability on the wife and children of the deceased and after demise of the deceased, nothing is given to the daughters of the deceased and thus, this statement in the will cannot be of the deceased and this is a purely fabricated document.

(iv) It is stated that none of the family members of the deceased are aware of the will and there was no occasion for the

deceased to make such a will prior to his demise and on the given date when the will is said to have been prepared, the driver/servant of the deceased who was with the deceased during that period has clearly stated that the deceased has not executed any documents on the given dates.

(v) It is also stated that the other suspicious circumstance of the will is that the will provides that the will be produced only after 11 months of the demise of the deceased is surprising and also coincides with the fact that the will was prepared after the succession proceedings was filed by the informant and thereafter, registered and produced in the succession proceeding. It is stated that to overcome this period of 11 months of non registering of the will, this specific clause was inserted to give some authenticity to the will.

(vi) It is also stated that it is to be noted that the will is prepared on the letter head of Kaustum Engineers as blank signed letter heads of Kaustum Engineers were available and the will is not on the stamp paper. All these aspects clearly point the fraudulent nature of the will.

11. The learned APP, so also the learned counsel assisting APP submits that the case is primarily criminal in nature and that merely because civil proceedings are filed subsequently, it would not change the nature of criminal activities done by the applicants. It is therefore submitted that in view of the above, it is necessary that entire conspectus of the matter has to be investigated thoroughly and the interim protection granted in favour

of the applicants needs be vacated and the applications be rejected.

12. Having considered the rival submissions, at the outset, it is necessary to primarily deal with the will of the deceased husband of the informant and the attending circumstances in which the will is made to see whether the will is highly suspicious and there is element of criminality involved in the matter which needs to be investigated thoroughly.

13. From the perusal of the will, following clauses in the will needs to be noted, which are as under :-

"7. माझ्या नावाची कस्तुम इंजिनीअर्स या नावाची फर्म आहे. कस्तुम इंजिनीअर्स ला देणे असलेले सर्व व्यवहार माझ्या सर्व भावांना माहित आहेत. व्यवसाया करिता मी खाजगी रकमेची उचल केलेली आहे ते देणे बाकी आहेत त्याची सविस्तर माहिती नरेंद्रला आहे व अरुणा महेंद्र काला माझी पत्नी हिने वरील देणे नरेंद्रच्या सल्या प्रमाणे चुकते करावे. माझ्या मुली ह्या त्यांच्या घरी सुखी समाधानी आहेत. या पुर्वीच मी त्यांना जे द्यावयाचे होते ते दिलेले आहे. माझ्या मृत्यूनंतर माझ्या मिळकतीतुन मुलींना आता काही देउ नये/मिळु नये अशी माझी इच्छा आहे.

8. माझा भाउ विजय व त्याचा मुलगा आदित्य यांनी माझ्या इच्छेचा नेहमी आदर केला आहे. आम्हा चौघा भावामध्ये आम्हाला एकच मुलगा आदित्य आहे. माझे व काला कुटुंबीयांचे नाव पुढे उज्वल ठेवेल याचा मला विश्वास आहे, म्हणुन मी वरील मालमत्ता त्यांना देत आहे.

9. करीता हे मृत्यूपत्र खालील साक्षीदारा समोर लिहुन ठेवले आहे. माझ्या सांगण्या वरून हे मृत्यू पत्र जी. एन. संगवार यांनी संगणकावर तयार केले व सर्वांना वाचुन दाखविले. मी, साक्षदार व संगणक या सर्वांनी या मृत्यू पत्रावर एकमेकान समोर सह्या केल्या आहेत. हे मृत्यूपत्र मी जितेंद्र मदनलाल छाबडा यांच्या कडे देत आहे त्यांनी माझ्या मृत्यूच्या 11 महिन्या नंतर विजय काला किंवा आदित्य विजय काला यांना द्यावेत. हे माझे शेवटचे मृत्यू पत्र दिनांक 17/10/2019 रोजी लिहीले आहे ते माझे इस्टेट वारसास बंधन कारक आहे. "

14. From the above paragraphs of the will, it is to be noted that all the liability of the business are fasten upon the widow, so also none of his daughters, who are natural successors of the deceased, are granted anything under the will.

15. In the will, it is stated that son of the applicant Vijay namely Aditya has always respected wish of the deceased and as such, since he is the only son amongst four brothers, property mentioned in the will is gifted to him. In para 9 of the will deed it is stated that after 11 months of the demise of the deceased the will is to be handed over by Jitender Madanlal Chabda, possessor of the will to the applicants i.e. Vijay Kala and his son Aditya Kala.

16. It is to be noted that the deceased had no grievance or any problems with his wife or his daughters. He passed away under the care of his wife and daughters. The will was not registered at the time of making and produced after 11 months of demise of the husband of informant and put up for registration, prima facie creates great suspicion as regards the will. The will per say divest everything from the natural heirs and grants what is left to the son of applicant Vijay. In pursuance of the will already various actions are taken by the applicants. The will was only produced in the proceeding filed for succession by the complainant while filing objection to the same. In the succession proceeding, the applicants filed one oral partition recorded on 19.10.2020 on stamp of Rs.100/- and a will prepared on the letter head of Kaustum Engineers dated 17.10.2019. It is to be noted that the alleged will is made just prior to the demise of the husband of the complainant. The will is also on the letter head of Kaustum Engineers and the informant has

stated that the blank signed letter heads were utilized by the applicants. It is also stated that at the relevant time when the will is alleged to have been signed, the driver of the husband of the informant was all day along with the husband and the driver has stated that no documents were executed on the same day. All the above aspects makes the will highly suspicious and disastrous consequences are following from the will. The contentions of the complainant that the will and the oral partition deed later transcribed on stamp paper are prima facie fraudulent and though investigation is required towards it's preparation and usage. Merely because the will be put to test in the Civil proceedings, the criminal proceedings cannot be kept in abeyance more particularly when the will is extremely suspicious and the attesting witnesses are also accused in the case. Considering all the above aspects of the matter, this Court is prima facie of the view that the will is extremely suspicious and that through investigation in the matter would be required. Considering the same, this Court holds that this is not a fit case to grant anticipatory bail. As such, the applications are dismissed.

17. It is clarified that the observations made in this order are limited for the disposal of the present anticipatory bail application and the trial Court shall not be influenced by the observations made hereinabove while deciding regular bail or trial.

[ARUN R. PEDNEKER, J.]

18. At this stage, the learned counsel for the applicant submits that as the applicant has been granted interim relief for the long time, he wants to

challenge the present order and therefore, the interim relief may be continued for the period of four weeks. Considering the above, the interim protection granted earlier to continue for the period of two weeks from today.

[ARUN R. PEDNEKER, J.]

ssc/