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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1394 OF 2024
WITH
INTERIM APPLICATION NO. 2400 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.1394 OF 2024
WITH
CRIMINAL APPLICATION NO.145 OF 2023

Kalavati Tukaram Patil & Ors.

... Applicants

Vs.

State of Maharashtra

... Respondent

- Mr. D.S. Maispurkar for the Applicants.
- Mr. Ajay S. Patil, APP for the State.- Respondent No.1.
- Mr.Nitin Patil a/w. Mr. A.M. Savagave for Respondent No.2/Informant.
- ACP Shailesh Kale, Ambarnath Division, Additional Charge Ulhasnagar Division.

CORAM : RAJESH S. PATIL, J.

DATE : JANUARY 29, 2025

P.C.:

1. The Applicants are seeking anticipatory bail in connection with C.R. No. I-673 of 2022 registered with Mahatma Phule Chowk Police Station for the offence punishable under sections 420, 465, 467, 468, 471 and 474 r/w. 34 of the Indian Penal Code.

2. The Applicants are *inter se* related to each other and her in-laws of Respondent No.2. Respondent No.2- Complainant got married to the son of Applicant No.1 on 27th May,2017. The said marriage was a

second marriage of Applicant No.1's son. However, after few months, the marital relationship of Respondent No.2 and the son of Applicant No.1 were not cordial. It is the case of Respondent No.2 that she drawn out of her matrimonial home and therefore, she filed proceedings under Section 498A of I.P.C. against her husband and her in-laws who are the Applicants before this Court. In the said proceedings, Applicant No.1 who is the mother-in-law of Respondent No.2 and the father-in-law of Respondent No.2 were protected by way of an order passed in anticipatory bail application. As regards the husband of Respondent No.2 and other in-laws are concerned, they got regular bail from the Trial Court. Subsequently, as the father-in-law of Respondent No.2 was not keeping good health as per the case of the Applicants, he prepared his Will dated 12th August, 2019. Unfortunately, during the pandemic, the husband of Respondent No.2 died on 15th June, 2020 and within a span of a month the father-in-law of Respondent No. 2 died on 6th July, 2020.

3. Respondent No.2 has challenged the Will of her father-in-law by filing a civil suit before the Civil Judge at Kalyan.

4. Mr. Patil, learned counsel appearing for Respondent No.2 submits that Exhibit '5' application was preferred but as of today there is no interim relief granted in Exhibit '5' application by the Civil Judge.

5. Respondent No.2 has also filed the present FIR which is

registered as CR No. I-673/2022 before the Mahatma Phule Police Station for offence punishable under Sections. 430, 465, 467, 468, 471, 474 r/w. 34 of IPC.

6. It is the case of prosecution and Respondent No.2 that there is a suspicious cloud created over the Will since it appears that the said Will was on stamp paper, which was purchased by person by name Ravi. The whereabouts of the Ravi is not known to the police.

7. Mr. Nitin Patil for Respondent No.2 submits that the stamp vendor was arrested and he has been granted bail by the trial Court.

8. I have gone through the photocopy of the Will, which is part of the documents as annexed with the compilation tendered before me. In the Will there are two witnesses, who have signed, they are closely related to the testator. After the signatures of the testator and the witnesses, on the next page is a doctor certificate. It is a matter of record that the testator has given most of his properties to his wife and after the death of his wife, the said properties are to be distributed among his three sons. As far as his daughters are concerned, certain shares are also given to the daughters. As regards, Respondent No.2, it has been stated that Respondent No.2, at that time while the Will was prepared, was not staying with the son of testator, but remained married to his son. However, as the relationship of Respondent No.2 with her husband and in-laws were not on good terms and he was

unhappy with the conduct of Respondent No.2, the testator has further stated that he has given one property to his son, who is the husband of Respondent No.2.

9. Unfortunately, the husband of Respondent No.2 died during the pandemic, so also his father/testator, who is died in the pandemic. It is a matter of record that Respondent No.2 filed proceedings under Section 498A of I.P.C. against her husband and in-laws. Therefore, I find at this prima facie stage that the father-in-law mentioning about his relationship with Respondent No.2 and not giving away much of his properties to his son, nothing can be doubted about this.

10. In any case, it appears to be a pure civil dispute between the parties. I would like here to be clarified that a Will is not a document which should compulsory be on a stamp paper or registered. However, the prosecution is still harpening on the point that there is a problem with the stamp paper on which the Will has executed. Nothing much would turn on the stamp paper as the Will is not required to be on stamp paper.

11. As regards the argument of Mr. Nitin Patil, learned counsel for the Respondent No.2 that amongst the various properties mentioned in the Will, one of such property is the house "Raghav Hights". According to him, the time when this Will was allegedly prepared, the said building "Raghav Hights" was not in existence, still

then there is a reference of such building in the Will and further distribution of flats of such building is also mentioned. According to me, this in real sense, does not matter much if certain properties have been mentioned in the Will, which were not in existence or which was not on ownership of the testator.

12. On behalf of the Applicants, it is submitted that at least 12 times, the Applicants have visited the police station on the request of the police for recording statements. It is submitted that on behalf of the Applicant a specimen signature of the deceased has already been handed over to the police.

13. In the judgments of the Supreme Court in the cases of (a) ***Sarbjit Kaur V/s. The State of Punjab & Anr***, in ***Criminal Appeal No.581 of 2023***, (b) ***Hridaya Ranjan Prasad Verma V/s. The State of Bihar & Anr*** reported in ***(2000) 4 SCC 168***, it has been held that where there is purely a civil dispute between the parties, criminal proceedings should not be entertained, which is merely filed to pressurize the parties into settling the dispute. The paragraph no. 13 of **Sarbjit Kaur (supra)** reads as under :

“13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it

was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court.”

11. The paragraph no. 15 of Hridaya Ranjan Prasad Verma
(supra) reads as under :

“In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

14. Taking into consideration the law laid down by the Supreme Court in above judgments and the facts of the present proceeding, in my view, the custodial interrogation is not necessary. In my view, the case has been made out to grant anticipatory bail to the Applicants.

15. Hence the following order:

ORDER

(i) In the even of their arrest in connection with C.R. No. I-673/2022 Mahatma Phule Chowk Police Station, the Applicants be released on bail on their executing P.R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.

(ii) The Applicants shall attend the concerned police station on 13th February,2024 and 20th February, 2024 between 11.00 a.m. to 1.00 p.m.

[RAJESH S. PATIL, J.]