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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1469 OF 2025

Hemlata Harsh Shah … Applicant
V/s.
State of Maharashtra … Respondent

Mr. Vikram Nankani, Senior Advocate, a/w Mr. Ishwar Nankani a/w Ms. Rhea Sinkar a/w Ms. Prajakta Sawardekar a/w Ms. Gauri Mestha a/w Ms. Vishwa Shah and Mr. Saurabh Kewalramani i/b M/s. Nankani & Associates for the Applicant.

Mr. Shirish Gupte, Senior Advocate a/w Ms. Simantini Mohite, Mr. Shashank Dubey i/by Shivam Dubey & Mukund More, for the Intervener.

Mrs. Megha Bajoria, APP for the State – respondent.

Mr. Amol Waghmare, API, Powai Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 5, 2025

P.C.:

1. The present application is filed by the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, thereby seeking her release on regular bail in connection with Crime Register No. 569 of 2024, registered with Powai Police Station, Mumbai, for the offences punishable under Sections 467, 468, 469, 471, 420, and 120B of the Indian Penal Code, 1860.

2. The case of the prosecution, in brief, is that the complainant and the husband of the applicant (since deceased) were closely acquainted since the year 2012 and were also partners in a business venture, which continued till the demise of the applicant's husband. It is alleged that the marital relationship between the applicant and her deceased husband had either been dissolved or was under dissolution proceedings before the competent court. The records reveal that the partnership business remained operational till 2nd August 2019, and the applicant's husband passed away on 26th August 2019.

3. The gravamen of the allegation is that shortly after the death of her husband, the applicant projected herself to be the legally wedded wife and claimed rights over the assets of the partnership firm by relying upon a Will allegedly executed by the deceased on 22nd August 2019, i.e., merely four days prior to his death. The complainant has alleged that the said Will is forged and fabricated, and on the basis of such forged document, the applicant has fraudulently secured probate from the competent court, thereby attempting to unlawfully acquire the deceased's share in the business and properties.

4. It is further pointed out by the prosecution that the deceased had filed a divorce petition before the Family Court at Bandra on 5th July 2013, which remained pending till his demise on 26th August 2019. The said factual background, according to the complainant, gives rise to a reasonable inference that the purported Will dated 22nd August 2019 is a result of criminal conspiracy hatched by the applicant to wrongfully claim benefits as a legal heir. Based on these allegations, the impugned First Information Report came to be registered against the applicant.

5. Shri Nankani, learned Senior Advocate appearing for the applicant, submitted that the entire prosecution is based on the allegation that the Will dated 22nd August 2019 is forged. However, it is his submission that such allegation is unfounded in law as well as on facts. He pointed out that the said Will has already been probated by this Court, and such probate was granted with the express consent of all Class-I heirs of the deceased testator, including the testator's mother and his two sons. These legal heirs had also filed affidavits in support of the probate petition, and none of them opposed the grant of probate.

6. It is further submitted that the present FIR is an attempt to give a colour of criminality to what is essentially a civil dispute. The complainant, who claims to be a business partner of the deceased, has no caveatable interest in the estate of the deceased and, therefore, has no locus standi to challenge the Will. Learned Senior Counsel submitted that the applicant has not played any role in the preparation or execution of the Will and that the entire prosecution is a malicious attempt to harass the applicant, who is a woman and a permanent resident of Mumbai, residing there for more than 30 years with her family. It was also pointed out that the applicant has no past criminal antecedents and has cooperated with the investigation. Further, this Court, by its order dated 29th March 2025, had granted temporary bail to the applicant. In such circumstances, it was prayed that the applicant be enlarged on regular bail.

7. On the other hand, Ms. Bajoria, learned Additional Public Prosecutor appearing for the State, vehemently opposed the application. She submitted that during the course of investigation, a communication was received from the hospital where the testator was admitted, raising serious doubt regarding the authenticity of the medical certificate annexed to the alleged Will. According to her, the certificate purporting to certify the testator's physical and mental fitness was not issued by Dr. Chetan Kalal, who, as per hospital records, was the treating doctor. In fact, the hospital informed that Dr. Kalal is no longer in their employment.

8. The statement of Dr. Kalal recorded during the investigation indicates that he never issued any such fitness certificate. Another doctor, Dr. Megha Khandagale, has stated that she signed the said certificate on the applicant's request and with the permission of Dr. Kalal, but she has no knowledge of the contents or signature on the alleged Will. The learned APP further submitted that the applicant and the testator were divorced and had been living separately since the year 2013. The testator, on the date of the alleged Will, was admitted to the Intensive Care Unit (ICU) and was not in a condition to execute any legal document. It was also submitted that the applicant failed to comply with notice issued under Section 41A of BNSS and did not appear before the police on 7th January 2025. In view of the serious nature of allegations, she prayed for rejection of the bail application.

9. Shri Gupte, learned Senior Advocate appearing for the original complainant/intervener, also opposed the bail application. He submitted that the complainant was a partner in business with the deceased testator and that the firm had availed a substantial loan from nationalized banks, which was not repaid. It was the complainant who repaid the outstanding dues of ₹13 crore to protect his own interests. He contended that since the applicant and the testator were divorced in 2013 and were not in contact thereafter, the Will allegedly executed in 2019 is clearly fabricated and forged.

10. He further submitted that the signature of the deceased on the Will is forged. He also raised a serious allegation that the applicant misused blank cheques issued to the testator by the complainant, inserting her own name and the amount of ₹16 crore. Upon dishonour of the said cheque, the applicant issued a notice under Section 138 of the Negotiable Instruments Act and also initiated criminal proceedings under Section 138 before the Metropolitan Magistrate, Andheri, being Criminal Complaint No. 513/SC/2023.

11. He pointed out that the complainant had filed an application under Section 156(3) of the Cr.P.C. seeking investigation, and the learned Magistrate had directed inquiry on 18th May 2023. Pursuant to such inquiry, Crime Register No. 314 of 2023 came to be registered. In these circumstances, it was his submission that the applicant does not deserve the discretionary relief of bail and that the application be rejected.

12. I have carefully considered the rival submissions advanced by the learned Senior Advocates for the applicant and the complainant, as well as the learned APP for the State. I have perused the material placed on record, including the FIR, statements recorded during investigation, the probate order passed by this Court, and the documents pertaining to the alleged Will.

13. The core allegation of the prosecution is that the Will dated 22nd August 2019, based on which the applicant claims rights over the estate of the deceased, is forged and fabricated. However, this argument cannot be examined in isolation. It is not in dispute that the said Will has already been granted probate by the competent civil court. The probate proceedings were conducted in accordance with law, and notably, all the Class-I legal heirs of the deceased, namely, his mother and two sons, had appeared before the court and given their no objection to the grant of probate. They filed affidavits affirming the genuineness of the Will, and there was no challenge from any heir having a legal share in the estate.

14. It is a settled position of law that once a Will has been probated by a competent court, its validity stands judicially affirmed, unless the said probate is set aside by a higher court. The effect of a granted probate is conclusive in nature as per Section 41 of the Indian Evidence Act, 1872, and the same operates as a decree of a civil court. The criminal court, in bail proceedings, cannot sit in appeal over the decision of the probate court or presume the Will to be forged when a valid judicial order exists in its favour.

15. Moreover, the complainant admittedly is not a legal heir of the deceased. He is not related by blood or marriage and does not fall under the category of Class-I heirs as per the Hindu Succession

Act, 1956. His claim, if any, arises only in the context of a business transaction or commercial dealing with the deceased.

16. Upon a careful reading of the FIR and the material placed on record, it becomes evident that the foundation of the prosecution case lies in the applicant's claim over the estate of the deceased on the basis of a Will dated 22nd August 2019. This very Will has already been accepted as valid by the competent civil court in duly instituted probate proceedings. Therefore, the genuineness of the Will, the mental and physical condition of the testator at the time of its execution, and the circumstances surrounding its preparation have already been examined and concluded by a judicial forum having jurisdiction.

17. Prima facie, the present FIR appears to be a classic example of a civil dispute, relating to business transactions, repayment of loans, and succession of assets, being given the colour of a criminal case. The complainant's own grievance, as stated in the FIR and submissions, relates primarily to financial loss suffered due to non-repayment of loans and alleged misuse of business cheques. His challenge to the Will seems incidental and intended to undermine the legal effect of the probate, to which he was not even a party.

18. So far as the medical certificate is concerned, it is a matter for trial whether the same was issued validly or not. The investigation appears to be complete, and the main evidence, i.e., the Will and its supporting documents, are already in the custody of the investigating agency. The applicant has been released on temporary bail by this Court by order dated 29th March 2025 and has not misused the liberty granted to her. The applicant is a permanent resident of Mumbai, residing with her family for more than 30 years, and has no criminal antecedents.

19. In view of the discussion hereinabove and considering the nature of allegations, the applicant's conduct during the period of temporary bail, the absence of any criminal antecedents, and the settled legal position that criminal law ought not to be used for settling civil disputes, this Court is of the opinion that the applicant deserves to be enlarged on regular bail.

20. Hence, the following order is passed:

(i) The applicant Hemlata Harsh Shah shall be released on regular bail in connection with Crime Register No. 569 of 2024 registered with Powai Police Station, Mumbai, for offences punishable under Sections 467, 468, 469, 471, 420, and 120B of the Indian Penal Code, 1860, upon her executing a personal bond in the sum of ₹50,000/- (Rupees Fifty Thousand only) with one or more sureties in the like amount, to the satisfaction of the learned Magistrate.

(ii) The applicant shall not directly or indirectly make any inducement, threat, or promise to any witness or person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Investigating Officer or to the Court.

(iii) The applicant shall attend the Investigating Officer as and when called and shall cooperate with the investigation.

(iv) The applicant shall furnish her permanent residential address and mobile number to the Investigating Officer and the concerned Police Station, and shall not change the same without prior intimation to the Investigating Officer.

(v) The applicant shall not leave India without prior permission of the learned Magistrate having jurisdiction over the case.

(vi) It is clarified that the observations made in this order are only for the purpose of considering the bail application, and shall not be construed as an expression on the merits of the case at the stage of trial.

(vii) If it is found that the applicant has violated any of the conditions imposed hereinabove, it shall be open for the prosecution to move this Court for cancellation of bail.

21. The bail application stands disposed of.

(AMIT BORKAR, J.)