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ABA.1167/2022

MHCC050039982022



**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

**ANTICIPATORY BAIL APPLICATION NO.1167 OF 2022
(M.E.C.R.NO.544/2021)
(CNR NO.MHCC05-003998-2022)**

- 1. Mr.Batuk Gokuldas Morjaria,**
Age: 76 years; Occ: Retired,
- 2. Mr.Romil Batuk Morjaria,**
Age: 41 years; Both Indian
Inhabitant, residing at 203/103,
Girikunj CHS., S.V.Road, Opp.
Indraprasth shopping Centre,
Borivali(W), Mumbai - 400 092.

...Applicants/Accused

V/s.

State of Maharashtra
Through Borivali Police Station

....Respondent

Ld. Advocate Ms.Shweta Agrawal for the Applicants / Accused.
Ld.APP Shri P.K.Mahajan for the State.
Ld. Advocate Shri Ashok Kumar Upadhyay for the Intervenor.

CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE

SHRI N.L.KALE

(C.R.NO.14)

DATE : 25th July, 2022.

O R D E R

This is an application u/s.438 of the Criminal Procedure Code 1973 filed by the applicant for seeking Anticipatory Bail in M.E.C.R.No.544/2021 registered at Borivali Police station, for the offences punishable under sections 452, 406, 420, 468, 471, 504, 509, 506(2) of the Indian Penal Code, 1860.

Brief facts which gives rise to file the present application are as under: -

2. That, complainant Mahesh Kothari filed a private complaint against the applicants before Ld. M.M.Court, Borivali for offences U/s.452, 406, 420, 468, 471, 504, 509, 506(2) of the Indian Penal Code, 1860. By its order dtd.17/03/2021, Ld. M.M.Court, Borivali has sent the said complaint for its investigation U/s.156(3) of Cr.PC. After receipt of said complaint from Borivali Court, police registered the present crime and started investigation.

3. Now, by filing this application the applicants herein, who are made as an accused in the above private complaint, seeking pre-arrest bail for them.

4. In a compliant, it is alleged that, wife of complainant namely Rekha Kothare has got ownership rights on the basis of Conveyance Deed,

in respect of CTS NO.95, 95/1 to 20, original plot No.11, TPS No.3, Borivali (W), admeasuring area of 1440.20 sq.mtr. She has also got power of attorney of the said property. Complainant's wife has obtained ownership right in the said property on the basis of registered Conveyance Deed dtd.27/08/2007, executed by original owners Smt.Lilawati Morjaria. Since then, complainant and his family is in possession of the said property as its owner. It is alleged specifically that, applicant Batuk Morjaria has signed said Conveyance Deed as witness thereof.

5. According to the complainant, the applicants / accused are no concerned with the said property. They are illegally and unauthorizedly collecting rent from the tenants in that property. So also, the applicants have executed and created false, fabricated and bogus documents in respect of the disputed property. Dispute amongst the parties about ownership upon the said property is pending.

6. It is further alleged that, Siaram Mishra, accused Batuk and others prepared and created false, fabricated documents and illegally collecting rents from the tenants in the name of wife of complainant. It is alleged further that, on 24/03/2021, complainant received telephone call on his mobile by which, it was directed him to take back the case filed by him against Siaram Mishra. Thus, complainant alleging that, the accused infurtherance of their common intention committed cheating, forgery, criminal trespass etc. Hence, the complainant filed a private complaint in Borivali Court. His said complaint is under investigation.

7. According to the applicants, they have not committed any

offence alleged against them and they have been falsely implicated. Applicants alleged further that, civil dispute about the said property is pending in a court. Previously also, complaint alleging the similar allegations against them was filed by the complainant, in which this court has granted Anticipatory Bail. Applicants prays to allow the prayer.

8. This application is strongly resisted by prosecution by filing reply vide Exh.2. According to the prosecution, offences alleged are serious and investigation is going on. According to the prosecution, they want to recover documents from the accused about title, ownership etc., of the disputed property. According to the prosecution, the applicant may tamper the prosecution evidence.

9. In this matter, original complainant is also appeared and strongly resisted the prayer. On behalf of the original complainant, copy of Conveyance Deed, Property card, order passed by Hon'ble High Court in Suit No.1317/2007 etc., filed on record. Intervenor contended that, previous matter in which, Anticipatory Bail is granted to applicants is totally different than this matter. He submitted further that, the applicants illegally collecting rent amount from the tenant and they prepared false and forged documents.

10. Ld. advocate Smt.Shweta Agarwal appearing for applicants relied upon, Anticipatory Bail order passed in favour of the applicant, she also relied upon, prayers in S.C.Suit NO.2004/2010, which is pending between the parties. She submitted that, Conveyance Deed executed in favour of Rekha Kothari is challenged in Civil Suit filed by the applicants.

According to her, at the time of filing of previous complaint, similar and identical allegations of forgery and cheating were made against the applicants. But, this court has granted Anticipatory Bail to the applicants by passing order in Anticipatory Bail Application No.1165/2021. She submitted further that, the documents of title / ownership which, I.O. wants to seize are available in Government office. She prays to allow the prayer.

11. On the contrary, Ld. APP Shri Mahajan submitted that, previous Civil dispute is pending between the parties. Complainant's wife has become owner of the said property by virtue of registered agreement. He submitted further that, inspite of stay order, applicants given the property illegally by executing Leave and License Agreement. He prays to reject the prayer.

12. Ld. advocate appearing for original complainant submitted that, all the documents regarding title, ownership etc., of disputed property are in favour of the complainant. He submitted further that, registered Conveyance Deed, executed by mother of the applicant No.1 is yet not cancelled. He submitted further that, applicants illegally collecting the rents from the tenants without having any authority and by preferring false and forged documents. He prays to reject the prayer.

13. After hearing the submissions and after going through the documents filed on record *prima facie* it appears that, dispute regarding landed property is pending in between the complainant and applicants. It further appears that, previously also, an allegations were made against the

applicants about cheating, forgery etc., by the complainant. In that matter, this court has granted Anticipatory Bail to the applicants. Said order is on record. In that order there are clear findings that, due to pending Civil dispute, custodial interrogation of applicants is an unwarranted. Previously also, crime was registered on the basis of private complaint filed against the applicant by the complainant herein. Here also, applicant No.1 Batuk is 76 years old and suffering from illness. Applicant NO.2 is doing a job. Previously, considering the pending civil dispute, Anticipatory Bail was granted to both the applicants.

14. No doubt, now, fresh complaint is filed but, the allegations in the said complaint are relates to previous pending dispute itself. Whether, really any forged and false document prepared and used, by applicants? This aspect will be decided during the investigation. But, as per say of I.O., police want custody to recover original title documents from the applicant. But, so far as this aspect is concerned, police may obtained title documents from the complainant or from the concerned Government office also. For that purpose, physical presence of applicants with police is not necessary.

15. Applicants are permanent resident of the given address. There are very less chances of their absconding. Therefore, considering the fact that, previously, the applicants are released on Anticipatory Bail in respect of identical and similar nature of the offences, I am of the view that, in this matter also, the applicants are entitled for their release on pre-arrest bail, by imposing certain conditions upon them. Hence, I proceeded to pass following order:

ORDER

1. Anticipatory Bail Application No.1167 of 2022 is allowed.
2. In the event of arrest of, **Applicant No.1 - Mr.Batuk Gokuldas Morjaria, and Applicant No.2 - Mr.Romil Batuk Morjaria, be released on bail, on executing P.R.Bond of Rs.15,000/- (Fifteen Thousand Only) each with surety / sureties bond of like amount by them, in M.E.C.R. No.544/2021, registered at Borivali Police Station, punishable under sections 452, 406, 420, 468, 471, 504, 509, 506(2) of the Indian Penal Code, 1860.**
3. The Applicants are directed to co-operate with the investigation machinery.
4. Applicants are further directed to attend the concerned police station on every Monday in between 10.00 a.m to 12.00 noon, till filing of a Charge-sheet.
5. Applicants are further directed not to tamper or hamper with the prosecution evidence and witnesses in any manner.
6. Anticipatory Bail Application No.1167 of 2022 is disposed of accordingly.

(Order pronounced in open Court)

Date: 25.07.2022

(N.L.KALE)

**THE ADDL.SESIONS JUDGE
CITY CIVIL & SESSIONS COURT,
BORIVALI DIVISION, DINDOSHI**

Order direct dictated on : 21.07.2022 & 22.07.2022
Checked, corrected & Signed on : 25.07.2022

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CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE

Ms.Madhura M. Palav

AND TIME : 25/07/2022 at 04.25 P.M.

NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri N. L. Kale (Court Room No.14)
Date of Pronouncement of Judgment/Order	25/07/2022
Judgment/Order signed by P.O. on	25/07/2022
Judgment/Order uploaded on	25/07/2022

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