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

CRIMINAL APPLICATION NO.5557 OF 2015

Shrinivas s/o Laxminarayansa Damam
and anr.

..APPLICANTS

VERSUS

The State of Maharashtra

..RESPONDENT

Mr N.T. Tribhuwan, Advocate for applicants;
Mr N.T. Bhagat, A.P.P. for respondent;
Mr Amit A. Mukhedkar, Advocate holding for Mr Amol A. Kokad, Advocate
to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 15th October, 2015

ORAL ORDER :

The pre-arrest bail granted to the applicants by learned Additional Sessions Judge-2, Nanded, in connection with C.R. No.197 of 2014, registered with Police Station, Vazirabad, vide order dated 9th March, 2015, passed in Misc. Criminal Application No.90 of 2015, came to be cancelled by the said Court vide order dated 6th October, 2015, passed in Other Misc. Criminal Application No.41 of 2015, on the ground of failure of the applicants to honour the condition of attendance to the police station, as directed.

2. It is not in dispute that on few dates the applicants have attended the police station and co-operated with the investigation, however, subsequent thereto, they have not honoured the said condition, resulting

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into passing of the order dated 6th October, 2015, cancelling the bail granted to the applicants.

3. As an outcome of cancellation of bail, the present application for grant of pre-arrest bail is moved before this Court.

4. Learned Counsel appearing on behalf of the applicants, while making out a case for grant of pre-arrest bail, would urge that the nature of dispute as alleged is civil and is already *sub judice* before the Trial Court in Special Civil Suit No.70 of 2015, instituted by complainant.

5. The aforesaid suit has reached at the stage of recording of evidence and there is an interim mandatory injunction operating in favour of the complainant and against the present applicants, whereby it was directed to the present applicants to hand over possession of the shop, within a period of eighteen months from the date of the said order.

6. Learned Counsel for the applicants has invited my attention to the order passed by this Court on 24th August, 2015, in Appeal from Order Nos.69 of 2015 and 73 of 2015, so as to canvass that the issue as regards the demolition of structure and the settlement entered into between the parties is already *sub judice* before the Civil Court. According to him, whether the complainant was dispossessed in 2013 or on 3rd November, 2014, is required to be decided by the Civil Court and as such, sought support from the order dated 24th August, 2015, passed by this Court in

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above referred Appeals from Orders.

7. Apart from above, learned Counsel would urge that there was no intention of the applicants to show disrespect or disregard to the orders passed by the Sessions Court granting pre-arrest bail.

8. While opposing the application, the learned Addl. Public Prosecutor, who is assisted by learned Counsel Mr Mukhedkar, would urge that the applicants in high handed manner have dispossessed the present complainant, who was in settled possession of the property and have not honoured the order of mandatory injunction. According to him, once there was a protection granted by the Sessions Court in favour of the applicants, they were duty bound to honour the same, however, by not honouring the conditions, the applicants have shown disrespect to the orders passed by the Sessions Court and submits that this Court need not weigh equity in their favour. He would further urge that this Court, in view of prima facie involvement of the applicants in the commission of crime, reject their prayer for grant of pre-arrest bail.

9. It is required to be noted that the order granting pre-arrest bail was subject-matter of Criminal Application No.3733 of 2015 at the behest of the complainant, which was moved for cancellation of bail, however, the same was withdrawn pursuant to the application for cancellation of bail moved by the State.

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10. Having bestowed my thoughtful consideration, it is noted that the issue as regards dispossession of the complainant and demolition of the suit premises either in 2013 or on 3rd November, 2014, is already sub judice before the competent Civil Court. This Court, while taking into account the entire gamut of the matter in Appeal from Order Nos.69 of 2015 and 73 of 2015, has noted that in view of demolition of the structure, the suit instituted by the complainant has been expedited.

11. In the wake of above referred background, in my opinion, protection granted by the Sessions Court, in the present case, which is operating for a long time, cannot be withdrawn only on the ground that the applicants are not continuously reporting the investigating agency, as ordered. It is also required to be noted that the learned Addl. Public Prosecutor has not placed on record as to incompleteness of the investigation by attributing non-compliance of the order of grant of pre-arrest bail.

12. In view of above, in my opinion, it will be appropriate to continue the protection ordered by the learned Sessions Court on the same terms. However, in the facts and circumstances of the case, the applicants herein shall pay costs of Rs.50,000/-, i.e. Rs.25,000/- to the Library of Advocates Association of Bombay High Court at Aurangabad and Rs.25,000/- to the High Court Services Sub-Committee at Aurangabad, within a period of four weeks from today. Hence, following order :-

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In the event of arrest of the applicants, in connection with C.R. No.197 of 2014, registered with Police Station, Vazirabad, Nanded, for offences punishable under sections 427, 447, 448, 452 read with sec. 34 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

The applicants shall attend the concerned police station on every Monday and Thursday, between 10.00 a.m. and 2.00 p.m. till filing of the charge-sheet and to co-operate with the investigation.

The applicants shall pay costs of Rs.50,000/-, i.e. Rs.25,000/- to the Library of Advocates Association of Bombay High Court at Aurangabad and Rs.25,000/- to the High Court Services Sub-Committee at Aurangabad, within a period of four weeks from today.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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