

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 160 OF 2015

1) Abdul Hamid ShaikhApplicants

2) Shamsuddin Abbas Ali Shah

V/s.

The State of Maharashtra

....Respondent

Ms. Anjali Patil for Applicant

Mr. Rajesh Bindra a/w Mr. Brijesh Patil for complainant no. 1

Ms. Rutuja Ambekar APP for the State.

Mr. Shailesh D. Sanas, P.I. Tardeo Police Station

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 6th JULY 2015

PC :

Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in M.E.C.R. No. 11 of 2013 registered at Nagpada Police Station for offence punishable under sections 255, 256, 259, 420, 465, 468, 471 r/w 34 of Indian Penal Code.

2) It is the case of prosecution that complainant who happens to be a member of New Green Chambers Co-operative Housing Society situated at Sofia Zuber Road, Mumbai, filed a complaint before Metropolitan Magistrate, 25th Court, Mazgaon, alleging therein that present applicants happened to be members of managing committee of the said society. They were elected as the

Managing Committee for period of 5 years from 2011 to 2016. According to him, the applicants had decided to redevelop the building and were to sign redevelopment agreement with Elite Constructions. They had resolved to do so without obtaining the consent of the members of the society or they had put up a proposal for redevelopment. It is alleged that they had arbitrarily handed the contract for redevelopment to the original accused nos. 6 & 7 who are the partners of Elite Constructions. Complainant had written a letter dated 23/04/2012 to the Chairman Secretary to pass on the copy of the resolution passed in the general body meeting held on 08/04/2012 wherein it was resolved that society should be redeveloped. According to the complainant, he had then written a letter to the District Deputy Registrar of Co-operative Societies informing the Registrar that without calling for the tenders, applicants being members of managing committee, had resolved to do so. He had again written a letter to the Chairman Secretary of the society on 06/07/2012 requesting them to initiate a contempt proceedings against Ameena Abbas Khan and others as copies were not furnished to him. On 13/08/2012, complainant had purportedly received a letter from the office of the Deputy Registrar for production of papers. Complainant had sought

inspection of papers. It is also alleged that accused nos. 1 to 4 sent a letter dated 05/09/2012 to the office of Society Registrar 'E' ward with a covering letter dated 17/05/2012 for submission of the form M-20 bond executed by the managing committee. Complainant had filed an application under Right to Information Act asking for the details of form M-20, since he had sought to know the date of submission of form to the authority. Under R.T.I. he had learnt that form M-20 bond papers were not available with the office and that office has carried out search and papers were not available. It was the contention of the accused persons that they had submitted the form on 17/05/2011.

3) Complainant had then pursued the matter to the best of his capacity and had obtained information in respect of non-judicial stamp papers upon which M-20 form was submitted. He had learnt that stamp vendor Sourabh Limaye had received stamps on 14/02/2011 from District Treasury and the same were sold to the accused on 02/05/2011. Accused assumed office on 14/05/2011 but they had already purchased stamp papers on 02/05/2011. There are several other allegations in respect of affairs of the society which need not be gone into at this stage, however in para 18 of the complaint, complainant had stated

that the date of issuance of stamp papers to Sourabh Limaye was 14/09/2011. Stamps were issued in favour of Sourabh Limaye in September 2011 and therefore, according to complainant, stamps could not have been sold to present accused persons in the month of May – 2011. It appears that in the course of investigation, Sourabh Limaye was arrested, although his statement was recorded as witness. On the basis of entries in the register, Sourabh Limaye had informed the police that he had sold the said stamps to the present accused persons. It appears that there is mystery as to how present applicants have come into possession of the said stamps.

4) It is mandatory upon other elected member of managing committee of Co-operative Society to submit M-20 form within 15 days of assuming office, in default, office is deemed be vacated.

5) Learned counsel for the intervener fairly submits that enquiry in respect of originality and genuineness of the M-20 form is being enquired into by Co-operative Societies Department. It appears that constitution of managing committee was challenged. Administrator was appointed. However, by an order dated 28/04/2015, Divisional Joint Registrar, Co-operative Societies, Mumbai has passed an order granting status-quo till further orders in view of

the natural justice.

6) This Court cannot be oblivious of the fact that enquiry is initiated into the genuineness of the stamp papers submitted by applicants before statutory authorities and therefore, in the midst of enquiry, it would not be proper for the Court to grant custody for the purpose of interrogation. Only in view of this, applicants would be entitled for grant of pre-arrest bail. However, it is made clear that observations are prima facie in nature and this Court has not formed any opinion about genuineness of the non-judicial stamps or the date of submission of the said forms to the statutory authorities, since the whole issue is subjudiced before Statutory authorities. It is further made clear that observations made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial and shall not be taken into consideration for passing any appropriate orders before statutory authorities including Divisional Registrar of Co-operative Societies.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicants be enlarged on bail on

furnishing P. R. bond in the sum of Rs. 50,000/- with one or two solvent sureties in the like amount.

(iii) Applicant shall report Investigating Officer from 13/07/2015 to 17/07/2015, everyday between 10.00 a.m. to 01.00 p.m. and co-operate with the investigating agency to the best of their capacity.

(iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)