

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.81 OF 2014

Pankaj Chaudhary	...Applicant
vs.	
State of Maharashtra	...Respondent

Mr. Prashant Pandey i/b. Rajeev Sawant and Associates, Advocate for the Applicant.
Mrs. G.P. Mulekar, APP for the State.
Mr. Arun Sharma, learned Advocate for Respondent Nos.2 and 3.

CORAM : P.D. KODE, J.

DATE : FEBRUARY 06, 2015

P.C.

. Heard.

2. By this application, the first informant in C.R. No. 303 of 2013 registered with Bangur Nagar police station for the offences punishable under Sections 448, 454, 457, 380, 427 read with 34 of Indian Penal Code has prayed for cancellation of pre arrest bail granted to respondent Nos.2 and 3.

3. The said crime was registered upon the allegation that the first informant was possessing a flat bearing No. R/3/19 in Goverdhangiri CHS. He was also having another flat at Navi Mumbai and occasionally used to visit the flat in Goverdhangiri CHS. It is his case that the negotiations were in progress for the redevelopment of the said society and the first informant sought 3 BHK flat and expressed his willingness to pay the additional amount for the additional place than for the area of 2 BHK flat in the said society.

4. It is his the main case that on 03/11/2013 when first informant returned to the said flat on the occasion of Diwali, he found that entire building was demolished and M/s. Bharat Infrastructure Limited was effecting the construction work. It is his case that he took search for his articles in the flat i.e. articles detailed in the F.I.R. amounting to Rs. 1,97,000/-.

Thereafter, he lodged report against the directors of M/s. Bharat Infrastructure Limited and the Secretary of Goverdhangiri CHS.

5. The learned counsel for the applicant submitted that the order passed by the Court of Session granting pre arrest bail is illegal. It is submitted that Court of Session observed in para 5 of the said order that during the course of the investigation, the investigating officer recorded the statements of respondents on 11/12/2013 and 23/12/2013 and made inquiry with them. It is submitted that the Court of Session observed that in spite of registration of cognizable offence, the investigating officer has not arrested them till recording of their statements. The learned counsel submitted that while making the said observations the Court of Session failed to take into consideration that the investigating officer has not arrested them because respondents were

protected by an interim order passed. It is his submission that hence the Session Court construed the said fact as the circumstance in favour of grant of pre arrest bail.

6. It is difficult to accept said submission that there exists nothing on record that the said fact was not taken into consideration. As a matter of fact, all the said observations considered in proper perceptive reveals that the fact that investigating officer having inquired with the said respondents, recorded their statements and that was taken into consideration by the Court of Session while considering the request for pre arrest bail.

7. The learned counsel for the applicant submitted that the articles of the applicants were yet to be recovered was ignored by the Court of Session. After considering the observations made by the Court of Session in para 6 to the effect that *"However, learned APP and the I.O. prima facie*

failed to point out from material on record that applicants have stolen articles from the flat of informant", it is difficult to accept the relevant submissions canvassed. The said observations squarely reveals that the relevant aspect was duly taken into consideration by the Court of Session. The learned counsel for the applicant thereafter by pointing out the observations made in para 5 that the applicant has lodged report on 09/11/2013 regarding an incident which had occurred on 03/11/2013 and the crime was not registered uptil 29/11/2013 submitted that Session Court in spite of knowing the said aspect failed to appreciate of there being a connivance between the investigating officer and respondents.

8. It is difficult to accept the said submission considering the peculiar facts and circumstances involved in this case in which the first information report is based upon the fact of

building demolished and the articles not found by the first informant at the said place. Needless to add that the said F.I.R. by itself misses essential ingredients of the offence of theft of the articles of respondents having moved the property of the applicant. Apart from it, neither the applicant nor the learned counsel for the applicant has brought to my notice any other fact other than bare words of the first informant that such articles were lying on the relevant day at the said place.

9. Thus, considering the entire order passed by the Court of Session *inter alia* the guideline principles given by the Apex Court in the case of "*Siddharam Satlingappa Mhetre vs State Of Maharashtra And Others*¹" it is difficult to accept that the Court of Session while granting pre arrest bail has not considered the case of the applicant on the basis of said principles.

¹ Cr.A.2271/2010, Dt.02/12/2010 (SC).

10. Having regard to it, it is difficult to accept that there exists any case for cancellation of bail. Needless to add that no material has been brought to the notice of the Court of the respondent having misused the liberty and/or want of their custody and the progress in the investigation has been hampered. It can be further added that even the State has not filed any reply to said effect.

11. Resultantly, there are no merits in the application. Application clearly appears false and frivolous. Application stands dismissed.

(P.D. KODE, J.)