

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 278 OF 2015

1.	Murad Madadali Patel	)
2.	Amin Amarali Somaji	)
3.	Amarali Mohhamad Somaji	)
4.	Mahesh Maruti Jadhav	)
5.	Sunil Eknath Amle	).. Applicants

vs.

The State of Maharashtra	...	Respondent
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WITH

CRIMINAL APPLICATION NO. 314 OF 2015

Mehboob Abdul Gafar Shaikh	...	Applicant
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vs.

Murad Madadadali Patel & Ors.	...	Respondents
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Mr. Kuldeep Nikam, Advocate, for the applicants

Mr. R.V. Govilkar, for the Intervener.

Mr. Arfan Sait, APP for the State.

Mr. Rajendra Mohite, P.I. Hadapsar Police Station, Pune, present.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 6th October, 2015.

P.C.

Heard. This is an application under Section 438 of Cr.P.C.

2. The applicants herein are apprehending their arrest in Regular Criminal Case No.567 of 2014 wherein the applicants have been prosecuted for the offences punishable under Sections 406, 420, 467, 468, 471, 166(a), 166(b) read with Section 34 of Indian Penal Code pursuant to a complaint filed by the complainant on 18.7.2014 before the Judicial Magistrate, First Class, Pune.

3. On 18.7.2014, the complainant herein filed the complaint before the Magistrate contending therein that the applicants herein had entered into an agreement for sale with the complainant on 23.11.2011. It was agreed that the applicants would purchase the property at Vita for an amount of Rs.1.05 crore. That the complainant admits that an amount of Rs.65 lakhs by cash and Rs.30 lakhs by two cheques of Rs.15 lakhs each. Subsequently, i.e. sometime in February, 2012, the complainant had entered into an oral agreement for sale with the applicants for purchase of property situated at Pune. The amount agreed upon was Rs.75 lakhs. There was no written agreement. The applicants had paid Rs.60 lakhs by cash and by cheque. The amount was paid during the period 2.2.2012 to 26.6.2012. The title of the property at Pune was disputed and hence the parties had mutually agreed to call off the said transaction. The complainant had returned the amount of Rs.65 lakhs. It was also agreed that the complainant

would pay an amount of Rs.10 lakhs by way of compensation.

4. The learned counsel for the applicants, in the course of highlighting the background of the case, has submitted that on 24.7.2012, the complainant had transferred the property at Vita in favour of third parties. That the applicants had learnt about it subsequently and had issued a public notice on 18.8.2012 to all concerned. The complainant in the present case, had not responded to the public notice and has not responded to it till today. The third party had responded to the public notice sometime in October, 2012.

5. The present applicants had filed a complaint against the accused i.e. the complainant in the present case on 5.11.2012 before the JMFC, Vita. On 8.11.2012 in RCC No.94 of 2012, the learned Magistrate had passed an order under Section 156(3) of Cr.P.C. On 16.1.2013, the present applicants had filed a Civil Suit before the Court of Civil Judge, Senior Division, Sangli against the complainant seeking the relief of specific performance. The applicants had also prayed for an interim injunction. The said prayer was denied by the learned Civil Judge, senior division, Sangli. The applicants had impugned the said order before this Court by filing A.O. No.924/2013. The applicants had also filed Civil Application No.1112 of

2013 wherein the complainant is respondent No.1.

6. On 24.2.2015, the purchasers of the property at Vita had appeared before the Court and had made a statement that they would not create third party interest till disposal of the Civil Suit. The said statement was accepted. Special Civil Suit No.21 of 2013 pending before the C.J.S.D. Sangli, was expedited and the Appeal from Order was disposed of.

7. That in the case filed by the present applicants, the complainant had filed an application seeking discharge. By an order dated 9.5.2014, the complainant was discharged. The applicants have impugned the said order by filing a Revision Application before the Sessions Court.

8. On 18.7.2014, the present application is filed. The complainant has contended that the complainant had given a 100 Rupee Non-Judicial Stamp in favour of the applicants which was misused by them and the property at Vita was purportedly transferred in the name of the present applicants. It is an admitted position that the said stamp paper was purchased in the name of the complainant and the same was executed in the year 2011. Thereafter, the complainant had entered into a second

agreement. The said agreement did not materialise, since there was a dispute in respect of title of the property at Pune, the agreement was called off. However, the complainant had bonafidely refunded the amount of Rs.65 lakhs. The present applicants were the first one to move the Criminal Application on the basis of which an order under Section 156(3) was passed and the complainant was prosecuted. It is a matter of record that the complainant has been discharged in the said case.

9. The learned counsel for the applicants submits that initiation of the present criminal proceedings is only to seek a personal vendetta against the applicants who had prosecuted the complainant first in point of time. Be that as it may, Civil Suit No.21 of 2013 is pending before the C.J.S.D. Sangli. It prima facie appears that the dispute is of a civil nature. However, there have been misunderstanding between the parties and both the parties have taken recourse to initiation of criminal proceedings. In the present case, the custody of the applicants would be unwarranted. The application of the applicant No.2 has become infructuous as he was arrested by the police despite the fact that there was interim relief in his favour. He had been to the police station to hand over the disputed stamp paper. The stamp papers are in the custody of the police. The applicant No.2 has been

enlarged on bail. The prayer seeking pre-arrest bail has become infructuous.

10. In view of the above observations, the applicant Nos. 1, 3, 4 and 5 deserve pre-arrest bail.

11. It is made clear that the observations made hereinabove pertain to the application under Section 438 of Cr.P.C. and the same shall not be considered for the purpose of deciding the discharge application or at the time of trial.

ORDER

(i) The application is allowed.

(ii) In the event of their arrest, the applicant Nos. 1, 3, 4 and 5 be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount.

(iii) The applicants shall report to the concerned Police Station at Pune on first and third Sunday of each month for a period of three months and co-operate with the investigating agency to the best of their capacity.

Both the Applications stand disposed of.

(SMT.SADHANA S.JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.