

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 431 OF 2015

1 Shri Kamal Hirji Shah.
2 Shri Pinak Mahendra Selugar. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Prasanna Bhangale, advocate for Applicants.

Mr. S.D. Bhujbal, advocate for intervenor.

Ms. Rutuja Ambekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JUNE 15, 2015

P.C.:

1 Heard the learned Counsel for the applicants, learned Counsel
for intervenor and learned APP. Perused the papers.

2 This is an application under section 438 of the Code of Criminal
Procedure, 1973. The applicants herein are apprehending their arrest
in crime No. 213 of 2013 registered at Kashimira Police Station for

offence punishable under Section 448, 454, 457, 506, 427 read with section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 29th August, 2013 the complainant who happens to be an advocate lodged a report at the police station alleging therein that he is practicing lawyer. That on 9/6/2006 Varsha Yadav had purchased the gala from M/s. Giriraj Constructions Company. On 27/2/2012 the complainant had purchased the said shop from Varsha Yadav vide registered sale deed. He had written a letter to appropriate authority for transferring the said gala in his name. The said gala was being used as an official premises. On 15/12/12 present applicants had restrained the complainant from opening the said gala, as they claim ownership over it. The complainant had complained about the said incident vide registered A.D. letter to Kashmiri Police Station. The same incident had recurred on 5/2/2013. The complainant had again sent the complaint to Kashmiri Police Station by registered post. There was recurrence of the same incident on 22nd March, 2013. On 10th August,

2013, the complainant had been to the office. He had worked in the office for the whole day and returned home. On 11th August, 2013 at about 1.30 p.m. his brother had informed him that there has been damage to the office furniture. The complainant has lodged a report alleging that the articles in his office were damaged and thrown away. The board was removed and instead another board was installed showing that the said gala is for sale and the board was installed by M/s. Shanti Group of Companies which belongs to the present applicants. On the basis of his report Crime No. 213 of 2013 registered and investigation was set in motion.

4 The applicant was protected by way of an interim relief. It appears from the record that he has cooperated with the investigating agency. On the basis of the earlier incidents, the complainant had presumed that it was the present applicants who have committed criminal trespass into the office and have damaged his property.

5 Learned Counsel for the applicants have drawn attention of this Court to the recitals in the FIR that the complainant was called by the police for the purpose of inquiry. However, he has not cooperated with the same. In any case, there is delay of more than four months in drawing presumption that in all probabilities the applicants are the miscreants who have damaged the property. The learned Counsel submits that the complainant had also filed a suit seeking permanent injunction wherein the applicants are the defendants, bearing Civil Suit No. 200102 of 2015, wherein the Court has passed order of status quo on 13th March, 2015. The dispute prima facie appears to be of civil nature.

5 In that view of the matter, the applicants have made out a prima facie case for grant of pre-arrest bail.

6 The aforesaid observations are prima facie in nature. The same shall not be considered while deciding application for discharge or for

quashing of FIR or at the time of trial. The trial Court shall decide the matter on its own merits.

7 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each and one or two sureties in the like amount.
- (ii) The applicants shall report to Kashmiri Police Station on four consecutive Sundays between 10 a.m. to 1 p.m. commencing from 21st June, 2015 and cooperate with the investigating agency to the best of their capacity.

8 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)