

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 308 OF 2015**

Jayantilal Kalidas Unadkat & Ors.	...Applicants
Versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPLICATION NO. 294 OF 2015
IN
ANTICIPATORY BAIL APPLICATION NO. 308 OF 2015**

Shree Hind Co-op. Housing Society Ltd.	...Intervener
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IN THE MATTER OF :

Jayantilal Kalidas Unadkat & Ors.	...Applicants
Versus	
The State of Maharashtra	...Respondent

Mr. S. V. Kotwal i/b Mr. Rakesh Agrawal for the Applicants

Mr. S. H. Yadav, A.P.P for the Respondent-State

Mr. S. S. Kulkarni i/b Nankani & Associates for the Intervener/original complainant

API Mr. Prakash Sawant from MRA Marg Police Station is present

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 26TH MARCH, 2015

P.C. :

1. Heard learned Counsel for the applicants, the learned A.P.P and the learned Counsel for the intervener/original complainant.

2. By this application, the applicants seek pre-arrest bail in connection with MECR No. 2 of 2015 registered with the MRA Marg Police Station, Mumbai, for the alleged offences punishable under Sections 465, 466, 467, 468, 471, 474, 417, 418, 420, 120(B), 423 r/w 34 of the Indian Penal Code.

3. The present MECR arises out of a private complaint which is lodged by the Secretary of Shree Hind Cooperative Housing Society Ltd. The learned Metropolitan Magistrate, 38th Court, Mumbai was pleased to pass an order under Section 156(3) of the Cr.P.C. on the said complaint, pursuant to which, the aforesaid MECR came to be registered with the MRA Marg Police Station.

4. Few facts that are relevant are as under :

It appears that in the year 1981, the said flat No. 9 along with adjoining terrace was sold and transferred in favour of Smt. Kailash Shah and Smt. Neela Shah. The registered document reflects the same. Thereafter, in 2008, Kailash Shah sold the premises to one Chirag Doshi.

As Chirag Doshi failed to pay the dues of the Bank, action came to be initiated as against him under the provisions of SARFAESI Act by the Bank. The present applicants are the purchasers of the said premises from the bank. According to the learned Counsel for the applicant, the document of 1981 clearly reveals that the said flat No. 9 was purchased along with an adjoining terrace by Smt. Kailash Shah and Neela Shah. He also relied on a letter dated 14th January, 2011 written by the Secretary of the Society certifying that Smt. Kailash Shah and Neela Shah were bonafide members of the Society and had purchased flat No. 9 along with a terrace. The said letter was issued for the purpose of stamp duty and registration. Learned Counsel for the complainant states that the said letter has been withdrawn and hence, cannot be relied on. He submits that the present applicants are bonafide purchasers of the said flat along with the terrace. He submitted that there are certain other documents on record which also confirm the same. He relied on the valuation document issued by the Vijaya Bank in the SARFAESI proceedings. The said document shows valuation of the flat and the terrace.

5. The learned Counsel for the complainant submitted that the

terrace was never part of the flat premises and that civil proceedings have been initiated by the complainant as against the applicants with regard to the claim of the applicants over the terrace. According to the learned Counsel for the complainant, the word “terrace” appearing on page 93 was added subsequently on the said document. The learned Counsel for the applicants refuted the submission and submitted that a perusal of the document, at page 93, which is a sale certificate, issued under Rule 9(6) of the SARFAESI clearly reveals that the applicants had paid the requisite stamp duty for both the flat as well as the terrace. On the earlier date, the learned A.P.P was asked to verify from the Sub-Registrar of Assurances Office, as to whether the word “terrace” was added subsequently or was written by the bank staff of the same. Pursuant to the same, the statement of the clerk, Dattatraya Madhukar Pandhekar came to be recorded. According to the said statement, the said word ‘terrace’ appearing on the Sale Certificate is in his handwriting and was not added subsequently. It appears from the record, that the society has also initiated civil proceedings with regard to the claim made by the applicants, to the terrace and the applicants are the defendants in the said proceedings.

6. *Prima facie*, the dispute appears to be civil in nature. Whether the dispute with regard to the terrace adjoining flat No. 9; belongs to the applicants or the Society, is a matter which will be decided and adjudicated by the Civil Court. Considering the statement of the clerk and other material on record, it appears *prima facie* that the word 'terrace' was not subsequently added by the applicants and was in fact written by the clerk at the time when the original document was written. Considering the peculiar facts and the nature of dispute between the parties, custodial interrogation of the applicants is not necessary. The application is allowed on the following terms and conditions:

ORDER

- (i) In the event of the arrest, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- each, with one or two sureties in the like amount;
- (ii) The applicants shall not intimidate, tamper or attempt to contact the complainant or any witness concerned with the said case;

(iii) The applicants shall co-operate with the Investigating Agency.

7. It is made clear, that the aforesaid observations are *prima facie*, made only for the purpose of considering the anticipatory bail application.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. In view of the above order, the intervention application being Application No. 294 of 2015 does not survive. The same is also disposed of.

10. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.