

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1160 OF 2015

1. Asif Ali Mohd. Ali Shaikh
2. Mr. Sajid Ali Mohd. Ali Shaikh
3. Mr. Ashraf Ali Mohd. Ali Shaikh

.....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. S. R. Gaud for Applicant
Mr. Y. M. Nakhwa APP for the State.
Mr. Shankar Patil, A.P.I. Paydhuni Police Station, Mumbai

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : AUGUST 10, 2015.

PC :

Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicants herein are apprehending his arrest in crime no. 266 of 2015 registered at Paydhuni Police Station for offence punishable under sections 454, 448, 427 r/w 34 of Indian Penal Code.

2) It is the case of prosecution that complainant Mohammed Shafiq Abdul Haq happens to be a close relative of present applicants in the sense that complainant is married to maternal cousin of present applicants. The dispute is in respect of a shop no. 13, 188 Ibrahim Mohd Merchant Road, Paydhuni,

ism

Mumbai, where complainant was allegedly running a sweat mart. The premises is owned by Shantinath Derasar. Smt. Hanifabai Vazir Ali and Vazir Ali were the tenants of the said premises. The father of the complainant had taken it on rent 40 years ago, pursuant to an agreement between the parties. Complainant has alleged that since they were close relatives, father of complainant had only prepared a rent receipt and the premises was transferred in the name of complainant and Hanifabai Vazir Ali. According to complainant, he was paying light bill and other encumbrances of the said shop. According to complainant, present applicants used to threaten him to transfer the shop in their names and therefore, he had closed the shop in the year 2012 and used to open it only for the purpose of cleaning the premises. According to complainant on 09/02/2015 in the afternoon at about 1.45 p.m., Gafar informed him that present applicants have forcibly broke open the lock of the shop and had entered the premises and hence, complainant was constrained to initiate criminal prosecution.

3) In the course of investigation, it has transpired that complainant herein had filed R.A.D. Suit No. 146 of 2012 before Small Causes Court at Mumbai wherein present applicants along with Derasar were the defendants. That

consent terms were filed in the said suit on 21/02/2012 and hence, suit was decreed in view of the consent terms by Judgment and Decree dated 04/03/2012. Consent terms were taken on record.

4) It is pertinent to note that suit was filed for declaration that the plaintiff is tenant of the said premises i.e. shop no. 13, 188 Ibrahim Mohd Merchant Road, Paydhuni, Mumbai and for seeking permanent injunction that the defendants shall be restrained from disturbing the peaceful possession of the suit premises and that complainant was in possession of the suit premises. It is further pertinent to note that there is no reference to the civil suit in the F.I.R.

5) In the consent terms drawn before the Civil Court, it was specifically agreed that defendant nos. 3 to 8 shall pay a sum of Rs. 20,00,000/- to plaintiff regarding his service to managing the said premises and relinquishing his right in favour of defendant nos. 3 to 8. It was also agreed that in the eventuality that defendants fail to pay the said amount to the plaintiff, then plaintiff shall file a suit against defendants for declaring him as a tenant. The defendants were directed to pay amount within 6 months. Plaintiff was directed to hand over peaceful possession of the suit premises upon receiving the said amount, if paid within 6 months.

6) Learned counsel for the applicants fairly submits that applicants have not paid the said amount to the complainant. In view of this, complainant would be at liberty to file a fresh suit seeking rights of tenancy or else seeking executing of the decree passed pursuant to the consent terms.

7) Taking into consideration the fact that dispute is of a civil nature between the relatives and the complainant has an option of availing alternative remedies seeking execution of decree or filing of the suit, custodial interrogation of the applicants would not be imperative. It is made clear that observations made herein above are restricted to the application under section 438 of Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

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. 25,000/- each with one or two sureties in the like amount.

(iii) Applicants shall report to concerned police station from 13/08/2015 to 19/08/2015 between 10.30 a.m. to 01.00 p.m. and co-

operate with investigating agency to the best of their capacity.

(iv) In the eventuality that applicants do not attend the said police station on the given dates, prosecution would be at liberty to file an application seeking cancellation of relief granted in favour of applicants.

(v) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)