IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.

Criminal Application No. 1659 of 2016

District : Nanded

1. Mohammad Farooq s/o. Taj Mohammad,
   Age : 57 years,
   Occupation : Business,
   R/o. Hataipura Kandhar,
   Taluka : Kandhar,
   District : Nanded.

2. Sayad Rashid s/o. Sayyad Inamdar,
   Age : 70 years,
   Occupation : Pensioner
   (Rtd. Ext. Officer),
   R/o. Dargapura Kandhar,
   Taluka : Kandhar,
   District : Nanded.

3. Shaikh Aminsab s/o. Sk. Shadulsab,
   Age : 80 years,
   Occupation : Pensioner,
   R/o. Mukbara, Hataipura,
   Near Lungargalli,
   Kandhar, Taluka : Kandhar,
   District : Nanded. .. Applicant.

versus

1. The State of Maharashtra,
   For the Police Station, Kandhar,
   Taluka : Kandhar,
   District : Nanded,
   Through the Public Prosecutor,
   High Court of Bombay
   at Aurangabad.

2. The District Superintendent
   of Police,
   Nanded,
   Taluka & District : Nanded.

3. Dattatraya s/o. Dhondiram Sadhu,
Age : 67 years,
Occupation : Agriculture,
R/o. Kandhar,
Taluka : Kandhar,
District : Nanded. .. Respondent.

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Mr. P.V. Mandlik, Senior Advocate, with
Mr. P.P. Mandlik, Advocate, for the applicants.

Mr. S.D. Ghayal, Addl. Public Prosecutor, for respondent nos.1 and 2.

Mr. G.P. Shinde, Advocate, for respondent no.3.

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CORAM : N.W. SAMBRE, J.

DATE : 16TH JUNE 2016

ORAL ORDER :

Heard.

2. The applicants are seeking pre-arrest bail in connection with Crime No. 21/2016, registered with Police Station, Kandhar, District Nanded, for offences punishable under Sections 420, 467, 468, 471, 474 and 120B of the Indian Penal Code.

3. The case of the complainant is that he is owner of the property bearing No. 2-15 wherein a shop is situated which was given on rent to the applicants on oral agreement executed during Diwali of the year 2014. It is claimed that the present applicants have

inducted sub-tenant and subsequently prepared a forged document. The said agreement is claimed to have been executed on 1st January 1981.

4. While trying to make out a case for grant of pre-arrest bail, the learned Counsel for the applicants submits that there is a Civil Suit initiated by applicant no.1 in which an injunction is operating against the complainant - landlord i.e. not to disturb peaceful possession of the present applicant no.1. The learned Senior Counsel would then urge that the custodial interrogation of the applicants is not necessary as genuineness of the document would be an issue which could be gone into in the pending Civil Suit. He would then submit that in case, if it is noticed that the applicants are responsible for executing any forged agreement as is claimed, the Court may take up appropriate action against the applicants.

5. The learned Addl. Public Prosecutor, who is assisted by Mr. G.P. Shinde, the learned Counsel for respondent no.3 (original complainant), submits that under Right to Information Act, respondent no.3 had sought information from the Government and it is found that one of the receipt with agreement was printed much later i.e. in 2005 and not on the date of execution of agreement. According to him, fraud is apparent.

6. Perused the investigation papers. Heard the learned Counsel for respective parties.

7. It is not in dispute that the Civil Suit is already pending between the parties and in the said Civil Suit, documents for execution of agreement, including that of receipts, could be gone into and if said documents are to be forged, it will be open for the concerned Civil Court to initiate appropriate action against the persons so held responsible.

8. This Court cannot lost sight of the fact that the applicants are lawfully inducted tenant and there is an injunction operating in their favour from the Civil Court. In this background, custodial interrogation of the applicants is not necessary.

9. Hence, the Application is allowed with following directions :-

(a) Ad interim protection granted by this Court vide order dated 17th March 2016 is confirmed, subject to the condition that the applicants shall attend Police Station, Kandhar, District Nanded, as and when reasonably called by the Investigating Officer for the purpose of investigation.

(b) The applicants shall not try to contact any of the prosecution witnesses and they shall not try to tamper with the prosecution evidence in any manner whatsoever.

(c) It is made clear that grant of pre-arrest bail to the applicants shall not preclude the Civil Court to initiate action, in the event, the documents in question are found to be forged one.

10. The Application stands disposed of in the aforesaid terms.

(N.W. SAMBRE)
JUDGE

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