

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 224 OF 2016

Salim Siddhumiya Shaikh & Ors. ... Applicants

vs.

The State of Maharashtra ... Respondent

Mr. B. G. Tangsali, Advocate for the applicants.

Mr. A.S. Patil, A.P.P. for the State/respondent.

**WITH
ANTICIPATORY BAIL APPLICATION NO. 335 OF 2016**

Narayan Shankar Pawar ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. B. G. Tangsali, Advocate Counsel for the applicant.

Mr. A. S. Patil, A.P.P. for the State/respondent.

Coram : N. W. SAMBRE, J.

Date : 16th December, 2016

P.C. :

1. The matter is placed on the board for speaking to the minutes of the order dtd. 24th November, 2016 in order to correct the

appearance of the learned APP. The learned APP points out that in the title of the order, his name i.e. Mr. A.S. Patil is required to be typed instead of Ms. S.S. Kaushik. The correction in the order be carried out and the order be read accordingly.

(N. W. SAMBRE, J.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 224 OF 2016

Salim Siddhumiya Shaikh & ors. ... Applicants

vs.

The State of Maharashtra ... Respondent

Mr. Abhijeet Kandarkar, Counsel for the applicants.
Mr. A.S. Patil, A.P.P. for the State/respondent.
Mr. Ashish Dube, for the intervener.

**WITH
ANTICIPATORY BAIL APPLICATION NO. 335 OF 2016**

Narayan Shankar Pawar ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. Rajiv Patil, Senior Counsel i/by B. G. Tangsali, Counsel for the applicant.
Mr. A.S. Patil, A.P.P. for the State/respondent.
Mr. Ashish Dube, for the intervener.

Coram : N. W. SAMBRE, J.

Date : 24th November, 2016

P.C. :

1. The applicants are seeking pre-arrest bail in Crime No. I-302 of 2015 registered with Kasarwadavali Police Station for an

offence punishable under Sections 384, 467, 468, 471, 420, 506 r/w 34 of the Indian Penal Code.

2. The complainant is an Architect by profession holds a development firm in the name of Yogeshwar Developers, entered into an agreement with applicant Salim and his other 28 family members for developing the plot Survey No. 184 Ghodbandar Road, Thane admeasuring 11,380 sq. mts. upon executing a registered Power of Attorney on 29th August, 1996. It is claimed that accused Salim and his family members received an amount of Rs.61,50,000/- and Rs.75,47,800/-.

3. After obtaining various permissions from the Thane Municipal Corporation ('TMC', for short), the complainant started development work on the property in January-2007, who was served with a notice by the TMC to stop the construction.

4. Upon enquiry he noticed that accused no.2 Ramrao Gurralla has created bogus and vague agreement of Power of Attorney dated 16th December, 2006 to the extent of 34 Guntha land out of the property, which was in possession of the complainant. It is also claimed that, 3 Guntha land from the above referred property was shown to have been sold to accused no.3 Pradip Bhurke.

5. Applicant-Accused Narayan Pawar in Anticipatory Bail

Application No.335 of 2016 is a Corporator elected to the Thane Municipal Corporation and also Group Leader of Nationalist Congress Party, who is claim to have connived with co-accused Ramrao and Pradip, who are Tea-Stall owner and Tailor, hatched conspiracy against the complainant so as to deter him from implementing the project in question.

6. It is claimed in the F.I.R. that all these accused inconnivence with each other with a common object and criminal intention, not only tried to stall the project but have also tried to practice fraud, so as to stop the complainant from smooth execution of the said project. The accused Narayan Pawar claimed to have used his office time and again for stopping the construction illegally, issuing threats for extortion of Rs.3 crores, and influenced the officials of the TMC to stop his construction. In the above referred background, Crime No. 302 of 2015 came to be registered.

7. While trying to make out the case for grant of bail, Mr. Kandarkar, the learned counsel for the applicants in Application No.224 of 2016 on behalf of the applicants Salim, Ramrao and Pradip, urges that the applicants are entitled for pre-arrest bail particularly when there exist civil dispute between the complainant and applicant no.1 Salim, pending before the appropriate Court as the entire dispute is civil and contractual in nature. It is then

claimed that applicants no.2 and 3 Ramrao and Pradip are the purchaser without notice as the agreement between the complainant on one hand and Salim and his family on other hand was not within their knowledge, as such no criminal intention on the part of applicants to commit the offence in question could be inferred. It is further claimed that, it is the complainant, who has practiced fraud on all the three applicants and land in question claimed to have been taken over for development. When the original owner of the property Mr. Siddhumiya was alive, the Power of Attorney and the agreement with legal heirs is void and can't be relied upon by the complainant. It is also claimed that the entire offence is based on the documents and the custodial interrogation is not necessary as the documents are already seized and the signature on the Power of Attorney executed by applicant no.1 and his relatives in favour of the complainant is under dispute. It is also claimed that there is a unexplained delay in lodging F.I.R. which raises serious doubt as regards the involvement of the applicants in crime in question.

8. Mr. Patil, the learned counsel for the applicant-Corporator in ABA No. 335 of 2016 would urge that the applicant while raising objection to unauthorised construction of the complainant was within his statutory limits as a Corporator. His

intention was to make act Corporation to stop illegal construction. According to him alleged threat of recovery of Rs.3 crore (extortion) is in the year 2008 and it is after seven years F.I.R. came to be lodged against the applicants. He would then submits that the civil dispute between the complainant and applicants no.1 to 3 has been stretched to the extent of involving the present applicant, who has no connection whatsoever to the crime in question.

9. According to him, all the applicants claim that they are permanently residing at their place of address and as well as co-operated investigating agency pursuant to the ad-interim protection and as such they be enlarged on bail.

10. Mr. **Patil**, the learned A.P.P. strenuously submits that the claim of the applicants for releasing them on pre-arrest bail is based on the fraud that has been practiced by each of the applicant on the complainant as could be inferred from the investigation papers. According to her, applicant-accused Narayan Pawar, a Corporator, is also the Group Leader of Nationalist Congress Party in the Thane Municipal Corporation and as such misused his authority by dragging the complainant to the Court of Law by initiating various litigation at the behest of TMC, also by stopping his project for no legal reasons by conspiring with the other co-accused, so as to draw illegal financial benefits. The

learned A.P.P. would then rely upon the record of the corporation to demonstrate that the death of the original land owner Siddhumiya, father of applicant no.1 Salim has been shown to have been in the year 1995 by issuing a death certificate to that effect, which was intentionally cancelled by applicants no.1 Salim and other co-accused by using the office of accused-applicant Narayan Pawar. The learned A.P.P. then submits that the custodial interrogation of the applicants very much necessary so as to investigate the serious fraud practiced by each of the applicants on the public authority and the complainant including that of execution of a Power of Attorney on 16th December, 2006. The learned A.P.P. submits that various orders passed by the Corporation at the behest of applicant Narayan Pawar of stopping the project of the complainant, coupled with the threat of extortion issued by the applicant Narayan Pawar - Corporator and the mode and manner in which the applicant has connived with each other committed an serious offence which requires their custodial interrogation.

11. The applicant Narayan Pawar appears to have written many letters particularly in relation to the project of the complainant, objecting and for stopping of the project of the complainant without any legal cause. Amongst other it is also

brought to my notice through one of the document that the Commissioner of the Thane Municipal Corporation on 21st December, 2012, made a noting that it is upon insistence of the accused Narayan Pawar, the construction work of the complainant is stopped. What could be gathered from the letters and correspondence initiated by applicant Narayan Pawar is that he was canvassing the case of the co-accused, so as to illegally support their interest in the land in question. He by hook or crook tried to stall the project of the complainant as the complainant has not honoured the extortion threat of Rs.3 crore. There is enough material on record to infer prima facie involvement of the said applicants-accused in the crime in question. It is also required to be noted that the applicant Narayan Pawar has intentionally issued complaints against the complainant time and again as is reflected from the record. There is enough material on the record to infer the involvement of all the accused in getting cancelled the Death Certificate of Siddhumiya so as to draw illegal benefit out of it.

12. So far as to contention of the remaining applicants-accused is concerned, it is required to be noted that the fact that the applicant-accused Salim along with his 28 family members in the year 1996 executed registered Power of Attorney, receipt of the substantial amount and the permissions granted in favour of the

complainant for carrying out the development. In spite of the same the accused persons in illegal manners has tried to pressurize the complainant to give up the project. It is also required to be noted that in spite of Power of Attorney in favour of the complainant, executed in the year 1996, applicant Salim proceeded to execute Power of Attorney in favour of accused Ramrao in 2006, who in turn transferred part of the land in favour of accused Pradip. There is enough material on record, to connect all the applicants-accused to the crime in question, which prima facie, in my opinion, calls for custodial interrogation.

13. In view thereof no case for bail is made out. As such, the applications of the applicants-accused stands rejected.

14. At this stage, the learned counsels for the applicants submit that the interim protection was parting for substantial period and as such same be continued for the period of six weeks. Which is opposed by the learned A.P.P. In the interest of justice, the protection is continued for the period of four weeks.

[N. W. SAMBRE, J.]