

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 402 OF 2016

Javed Gulam Mohammed Shaikh	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 409 OF 2016

Mohammed Sabir Raifq Khan	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Sandeep V. Bane, Advocate for the applicant in ABA/402/2016.
 Mr. Moinuddin Khan, Advocate for the applicant in ABA/409/2016.
 Ms. Sharmila S. Kaushik, APP for the State.
 Mr. Subodh Desai i/b. Mr. Amit Nalawade for the 1st Intervener.
 Mr. J.P. Gaikwad, A.P.I., J.J. Marg Police Station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
 DATE: **8th March, 2016.**

P.C.:

These two Anticipatory Bail Applications are from the same C.R., hence they are taken together. Investigating Officer is present. Both the applicants/accused are prosecuted for the offences punishable under sections 406, 448, 420 r/w. 34 of the Indian Penal Code in C.R. No. 434 of 2015 at J.J. Marg Police Station, Mumbai. The offence is registered at the instance of Humayu Safi Ahmed Shaikh on 17th December, 2015.

2. It is the case of the complainant that he is in the business of

redevelopment of buildings and construction business. In the year 2004-05, the company demolished three buildings, namely, Kudus Manzil, Mehboob Manzil and Farhan Manzil, 71 Huzaria Street, Nagpada, Mumbai -8. They constructed a building named Sana Heights. In this new building, all the old tenants were accommodated in the flats but only one flat, i.e. Flat No. 705 was not sold and it was kept with the company. On 14th March, 2014, when the builders handed over the building to the Society, they have mentioned in their letter that flat no. 705 is owned by the company and is to be kept vacant and the company will pay the maintenance charges. Accused/Sabir Raifq Khan, who was occupying flat no. 704, requested to use flat no. 705 temporarily for the period of three months, as there was wedding ceremony in his house. So, flat no. 705 was given to him. However, accused Sabir Khan did not vacate the said flat till now. Now the complainant found that he created a door in the common wall of flat no. 704 and 705. Thus, accused Sabir Khan and accused Javed Shaikh/Secretary of the Society is prosecuted because the Secretary and Members of the Society have help the accused in the commission of offence by giving NOC for change of electricity meter.

3. The learned counsel for the applicants/accused has submitted that the applicant/Sabir Khan is the one who is occupying Flat No. 705 and

applicant/Javed Shaikh is the Secretary of the Society and he has not committed any offence. The learned counsel for the applicant/Javed Shaikh submitted that NOC given is withdrawn. The learned counsel submitted that complainant has also filed L.E & C Suit No. 151 of 2015 in the Small Causes Court and the same is pending. He submitted that custody of the applicants are not required. The applicants are ready to cooperate the police and also ready to furnish all the documents in respect of the premises.

4. Learned APP and learned counsel for the complainant opposes these Anticipatory Bail Applications and submitted that the applicant/Sabir Khan has forcibly encroached upon the premise and has taken possession of the room and is still occupying the same. The learned counsel submitted that the manner in which the offence is committed shows that all the accused have common intention to commit this offence and, therefore, pre-arrest bail is to be rejected.

5. Perused the FIR and the documents produced herein. A Civil Suit is filed by the complainant. Considering the nature of the offence, I am of the view that custody of the applicants/accused is not required for effective investigation. Hence, pre-arrest bail is granted to the applicants/accused

on the following terms and conditions:

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, the applicants/accused be enlarged on bail on furnishing PR. Bond of Rs.25,000/- each with one or two securities in a like amount.
- (iii) The applicants/accused shall not tamper with the evidence.
- (iv) The applicants/accused shall not pressurize the complainant.
- (v) The applicants shall not indulge into any type of criminal activities, while on bail;
- (vi) The applicants shall attend the concerned police station on every Thursday between 5 to 7 p.m. till the filing of the charge sheet.
- (vii) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

(MRIDULA BHATKAR, J.)