

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.430 OF 2016

Irfan Bashir Shaikh & anr.

... Applicants

Vs.

The State of Maharashtra

... Respondent

Mr.Osman Chisty for the Applicants

Mr.S.H. Yadav, APP, for Respondent – State

Mr.Jaydeep Gaikwad, J.J. Marg police station – present

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **MARCH 9, 2016**

P.C.:

1. This is an application for pre-arrest bail as the applicants are facing charges under sections 406, 448 r/w section 34 of the Indian Penal Code in C.R. No.434 of 2015 registered at J.J.Marg police station, Mumbai, at the instance of one Humayun Shaikh on 17.12.2015. It is a dispute in respect of Flat No.705. The complainant is a builder who has constructed the building and handed over the possession of all the flats to the respective purchasers or the tenants except Flat No.705 and that flat was kept by the complainant for his own use and he was paying maintainance charges. One Sabir Khan who was occupying flat No.704 in the year 2012 wanted more premises as there was a wedding in his house. On request, the members of the society and the complainant allowed him to use flat

No.705 for three months. However, he did not vacate the same. He continued the use of the same and also put a common wall dividing flat Nos.704 and 705. Hence, the complaint was registered.

2. The learned Counsel for the Applicants submitted that applicant No.1, Irfan Shaikh is the Chairman of Sana Cooperative Housing society and applicant No.2 Mazharul Ashraf is the Treasurer of the said society and they are not concerned with this trespass or unauthorised use. They are just office bearers. He submits that NOC granted for the use of the said flat was also withdrawn by the society on 18.11.2015. The learned Counsel further submitted that the other office bearers, who are the co-accused in the same offence were granted anticipatory bail yesterday.

3. The learned Prosecutor is present and on instructions of the Investigating Officer, who is present in Court, confirms the status of the applicants-accused as the office bearers of the society.

4. Though today is the first date, in view of the submissions made by the learned Counsel for the applicant-accused and the learned Prosecutor, it appears that the applicants-accused are the office bearers of the said society and prima facie, they are not concerned with the unauthorised occupation or trespass by the main accused. Also, yesterday, two office bearers have been protected by order of pre-arrest bail. Hence, the present applicants are also granted pre-arrest bail on the following terms:

ORDER

- (i) In the event of arrest, the applicants-accused be enlarged on bail on furnishing P.R. Bond of Rs.25,000/- each with one or two securities in a like amount;
 - (ii) The applicants-accused shall not tamper with the evidence;
 - (iii) The applicants shall not pressurize the complainant;
 - (iv) The applicants shall attend the concerned police station on every Thursday between 5 to 7 p.m. till the filing of the charge sheet.
5. Anticipatory Bail Application is disposed of on the above terms.

(MRIDULA BHATKAR, J.)