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

**ANTICIPATORY BAIL APPLICATION NO.443 OF 2016**

|                                 |                 |
|---------------------------------|-----------------|
| Simran Shivkumar Mishra and ors | .... Applicants |
| V/s.                            |                 |
| The State of Maharashtra        | .... Respondent |

**ALONGWITH**  
**CRIMINAL APPLICATION NO.270 OF 2016**  
**IN**  
**ANTICIPATORY BAIL APPLICATION NO.443 OF 2016**

|                          |                 |
|--------------------------|-----------------|
| Deepak Daulatram Chawala | .... Intervener |
|--------------------------|-----------------|

**In the matter of**

|                                 |                 |
|---------------------------------|-----------------|
| Simran Shivkumar Mishra and ors | .... Applicants |
| V/s.                            |                 |
| The State of Maharashtra        | .... Respondent |

Mr. B. D.Joshi, for the Applicants.  
Mr. Arfan Sait, APP for the State  
Mr. Abhijit B. Kadam, for the intervener.  
Mr. Shrikant Shinde, API Kharghar Police Station.

**CORAM : A. M. BADAR, J.**

**DATE : 17th JUNE, 2016.**

**P.C. :**

1. Applicants/accused in Crime No.I-32/16, for the offence punishable under Section, registered with Police Station Kharghar, Navi Mumbai, at the instance of Deepak Chawla, by this application are praying

for releasing them on bail, in the event of their arrest.

2. Heard the learned counsel for applicants. By reading the entire text of the F.I.R., the learned counsel for applicants submitted that according to the informant payment of Rs.23.65 lacs was allegedly made and possession letter is alleged to have been given on 21.12.2015 by applicant Simran to the informant. He further pointed out that F.I.R. states that on 25.1.2016, an amount of Rs.40,000/- is allegedly paid by informant to tenant Altaf. He further pointed out that the F.I.R. discloses that on 31.1.2016, notice was given to the informant Simran to comply with the formalities and when the matter was informed to Kharghar Police Station, it was disclosed that dispute is of civil nature. The learned counsel by, pointing out the F.I.R., submitted that it was shown to be registered on 7.2.2016, when the information was received on 08.02.2016.

3. The learned counsel for applicants, by pointing out the agreement relied by the informant annexed to the application for intervention, submitted that this agreement is tripartite agreement. He further argued that as per this agreement, applicant Simaran was to purchase another flat of a third person and on such purchase, she was supposed to sell her flat to the informant. The learned counsel further argued that third party cancelled the agreement with Simran and consequently agreement of applicant Simran with informant stood

cancelled and this is reflected even from the F.I.R. as it mentions that an amount of Rs.7.75 was deposited in her account by applicant Simran.

4. By pointing out the provisions of Section 17 of the Registration Act, the learned counsel for applicants further argued that possession cannot be parted with by unregistered document and therefore, the entire agreement and possession receipt is illegal. He further argued that receipts annexed with the tripartite agreement placed on record by the intervener are not in tune with the amounts shown in the F.I.R.

5. The learned counsel for applicants by handing over copies of complaints lodged by the informant with police station Kharghar on 5.4.2016, submitted that though the informant was repeatedly making complaints to police, he was informed that the dispute is of civil nature and no cognizance of his complaints was taken. The learned counsel further argued that applicant Simran is real owner of flat in question. The informant had taken illegal possession of the flat owned by her. According learned counsel for the applicants, applicants were making request to the occupants of the flat to give possession of the flat.

6. I have also heard the learned APP as well as the learned counsel for the informant.

7. According to the prosecution case as reflected from the F.I.R.

as well as statements of witnesses, applicant Gurjit Mishra has induced the informant to purchase flat bearing B.304 owned by her daughter Simran in the Residency Co-operative Housing Society Ltd. The informant had paid an amount of Rs.23.65 to applicant Simran. As the informant was informed that Simran wants to purchase another flat and wants to make payment before 21.12.2015, an agreement/memorandum of understanding was entered into between parties and it was got notarized. The F.I.R. further shows that on 21.12.2015, possession letter of flat No.B-304 was given by applicant Simran to the informant. It is the case of prosecution that on 25.1.2016, by making payment of Rs.40,000/- to tenant Altaf, towards refund of his security deposit, the possession of the said flat was taken by the informant as per the instructions of the owner thereof i.e. applicant Simran.

8. Recitals in the F.I.R. further shows that on 2.2.2016, the informant and his wife were in occupation of this Flat No.B-304. When they were present inside the flat, applicants and other persons came there. Smashing the safety door of the flat, they attempted to break open the door. Footage of C.C.T.V. camera installed at the door of the flat shows braking of the wooden door of the flat in an attempt to dispossess the informant. The F.I.R. further reveals that the presence of police on being called by the informant did not deter applicants and their associates

in continuing their activities of dispossessing the informant. The F.I.R. further reveals that police took both parties to police station, but applicants and their associates again went back to the spot and started break open the door of Flat No.B-304.

9. Perusal of spot panchnama recorded during the course of investigation, fully corroborates the version of the informant and it shows that the safety gate of the flat was smashed and iron door as well as C.C.T.V camera were broken. Police seized all the broken articles from that flat. The Investigating Officer has collected recording of C.C.T.V. cameras installed in front of the said flat. The learned APP on instructions of the Investigating Officer, submits that photographs shows presence of applicants recorded in CCTV footage. Photographs found with the case diary do show that front door of the flat was being hammered for braking it open. The learned APP states that presence of applicants is recorded in the CCTV footage and it is seen that an attempt was made to take forcible possession of the flat.

10. Even assuming that the entire transaction between the parties is illegal, from the statement of Altaf, who is the tenant of the flat, it is seen that applicant No.1 Simran had asked him to vacate the possession of the flat on payment of his security deposit by the informant and then to give possession thereof to the informant. The tenant further reported to

the Investigating Officer that as per instructions of applicant Simran, he had delivered possession of that flat to the informant on 25.1.2016 on receipt of Rs.40,000/- towards security deposit from him.

11. It is thus clear that the informant was in possession of the flat in question. It is prima facie seen that present applicants and their associates attempted to take possession of flat in question by force and not by the procedure prescribed by law. Therefore, I see no force in the argument of the learned counsel for applicants that by unregistered agreement, possession cannot be parted with and therefore, no legal right accrues in favour of the informant. The conduct of applicants in taking law in their hand and attempting to get possession of the flat by breaking open its door certainly dis-entitle them from seeking relief under Section 438 of the Indian Penal Code. No case for anticipatory bail is made out. The application, therefore, is rejected.

12. Learned counsel for applicant prays for extension of ad-interim order granting anticipatory bail. When this Court has prima facie come to conclusion that law was taken in hand to evict occupant of the flat, no such extension can be granted. The prayer so made is rejected.

**[A. M. BADAR, J.]**