

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

ANTICIPATORY BAIL APPLICATION NO. 586 OF 2016

Smt. Meena Subodh Mistry & Ors.

.. Applicants

Versus

The State of Maharashtra & Anr.

.. Respondents

Mr. Rajendra Rathod i/b Mr. O.A. Siddiqui, Advocate for the Applicants.

Ms. Rutuja Ambekar, A.P.P. for the Respondent – State.

Mr. Vijendra Kumar Rai, Advocate for Respondent No.2.

CORAM : N.W. SAMBRE, J.

DATED : 1st DECEMBER, 2016.

P.C. :

1 The applicants are seeking pre-arrest bail in Crime No.57 of 2016 for the offences punishable under sections 448, 452, 454, 420 r/w. 34 with 120B of the I.P.C.

2 The applicants and complainant are the close relatives. It is claimed that the complainant after death of her husband started residing with the applicants and the husband of applicant No.1, happened to be the real brother of husband of the complainant. It is claimed that the property where they were residing located at Patil Estate B/44 - 45, 278 Tardeo, Mumbai, was in the name of husband of the complainant and after his death tenancy rights were transferred in favour of the complainant. It is claimed in the prosecution story that the applicants connived with their father Subodh and practiced fraud on the complainant dispossessed her of

the property, and took over possession of the new property as per the development agreement. The same has given rise to the crime in question.

3 While making out the case for grant of bail the learned counsel for the applicants submit that the parties are already litigating in a civil proceedings which is initiated by the complainant. According to them, in the present application so also in the civil proceedings an arrangement is made wherein the complainant could stay with the applicants in the premises in relation to which the dispute has arisen. He would then submit that custodial interrogation is not warranted.

4 The learned A.P.P. who is assisted by Shri Rai, the learned counsel for the complainant, would strenuously urge that all the documents including that of rent receipt stood in the name of late husband of the complainant. Thereafter it is the complainant who was in lawful possession of the property in question and who was dispossessed without following due process of law. It is further claimed that the new premises as were constructed in the redevelopment should have gone to the possession of the complainant. However, the applicants have trespassed by practicing fraud.

5 Considered the rival submissions it is not in dispute that a Civil Suit initiated by the complainant in the matter of declaration and injunction is pending before the civil Court so as to determine the rights of the parties in relation to the premises which appears to be bone of contention in the present crime.

6 Apart from above, this Court is required to take note of the fact that the complainant herself has come out with a case that the applicants and the complainant were residing together till the property referred supra has gone in redevelopment. The interim arrangement as is made in the civil suit and an undertaking given before this Court that the complainant will be permitted to stay in the premises in question is accepted herein as an undertaking.

7 In the light of above, in my opinion, the ad-interim protection ordered by this Court needs to be confirmed. Hence, the application is allowed.

8 In the event of arrest, the applicants be released on bail on executing PR. Bond of Rs.25,000/- each with two sureties in the like amount. The applicants shall appear before the Investigating Officer as and when called. The applicants shall not tamper with the evidence or influence the witnesses.

9 The undertaking given by the applicants in favour of the complainant shall continue to hold the field till the decision of the civil proceeding.

(N.W. SAMBRE, J.)