

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.786 OF 2016

Mushtaq Kasam Khot and Ors.] ... Applicants

Versus

State of Maharashtra] ... Respondent

Mr. M. A. Khan for Applicants.

Ms. Veera Shinde, APP for Respondent-State.

Mr. Gaurav M. Parkar a/w Roshan R. Sonawane for First Informant
(State Bank of India).

CORAM :- A. M. BADAR, J.

DATE :- JUNE 08, 2016

P. C. :-

1. By this application, the applicants/accused in C.R.No.I-244 of 2014 for the offences punishable under Sections 420, 406, 449 read with 34 of IPC registered at Kharghar Police Station at the instance of Chief Manager of State Bank of India, are praying for prer-arrest bail.

2. Heard the learned Counsel for applicants. He argues that there are no averments in F.I.R. to the effect that those were the applicants who had broken seal and taken possession of the property. He further argues that issue regarding outstanding amount to be recovered from the builder is still pending with the D.R.T. According

the learned Counsel for applicants, possession of flat was already delivered to the purchaser and therefore, *prima-facie*, it cannot be said that the builder or his persons have taken possession of the property. By drawing my attention to letter dated 04/08/2014 issued by the State Bank of India, the learned Counsel for applicants submitted that the bank had already deployed security for protection of the property on which possession was taken. Therefore according to the applicants, they are entitled for release as claimed in the application.

3. As against this, the learned APP submitted that the offence alleged against the applicants is serious warranting custodial interrogation of the applicants. The learned Counsel appearing for first informant – Bank argues that as of today, more than Rs.12 Crores are to be recovered from the applicants and the account of the applicants was declared as Non-Performing Asset in the year 2008.

4. The applicants are partners of Keystone Constructions which had taken loan from State Bank of India. They had mortgaged the plot with State Bank of India. According to the prosecution case, possession of the secured property was taken over by secured creditor i.e. State Bank of India by resorting to provisions of Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, on 22/07/2014. The order to that effect was passed by the District Manager, Raigad, on 13/03/2012 itself. The prosecution case further shows that though possession of the secured property was taken on 22/07/2014, immediately on

02/08/2014, persons employed by the builder i.e. the present applicants, came to the property and broke open seal of the flat and took possession of the property unauthorizedly.

5. Considering the degree of criminality shown by the applicants and their scant regard for law, the applicants cannot be shown indulgence. The offence alleged against the applicants is very serious in nature affecting public at large. Custodial interrogation of applicants is absolutely essential for proper investigation of the crime in question. Hence the application is rejected.

(A. M. BADAR, J.)