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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No. 436 of 2015

Crystal Park CHS Ltd ..Applicant.

vs.

The State of Maharashtra & Ors. ..Respondents.

Mr Javed R. Patel for the applicant.

Ms PP Shinde, APP for the State.

Mr Ganesh Gole for Respondent No. 2 and 3.

CORAM : A.S.GADKARI, J.

DATE : 05th January, 2016

P.C.

1. This is an application for cancellation of bail granted to respondents no. 2 and 3 by an order dated 31.3.2015 in Anticipatory Bail Application No. 542 of 2015 by the Additional Sessions Judge, Greater Mumbai.

2. Respondents no. 2 and 3 are accused in CC No.510/SW/2013, which is culminated in a crime registered with Oshiwara Police Station and which has been now culminated in CC No.510/SW/2013 under sections 420, 408, 409, 406, 120-B read with section 34 of IPC. The applicant is a Co-operative society represented by its Chairman Shri Salim Ahmed Merchant. It is the case of the complainant that the

applicants by forging resolutions dated 10/2/2002 and 20/5/2002 permitted a Cellular Company to erect towers in the premises of the applicant society and in furtherance of the said resolutions siphoned an amount of Rs.1,90,000/- thereby committing various acts of crime as contemplated under the aforesaid sections.

3. After the lodgement of the FIR, the respondent no. 2 and 3 preferred ABA No. 542/2015 in the Court of Additional Sessions Judge, Greater Mumbai. The learned trial Court after hearing respondents no. 2 and 3, the applicants and the learned APP was pleased to grant pre-arrest bail to respondents no. 2 and 3 by its order dated 31.3.2015. The said order is impugned herein.

4. The learned counsel for the applicant submitted that the learned trial Court did not take into consideration the fact that resolutions dated 10-2-2002 and 20-5-2002 and are fabricated resolutions and the signatures thereon are forged. It is further submitted that the said witnesses have given statement to the police and have stated that they never signed such resolutions. The learned counsel appearing for

respondents no. 2 and 3, on the other hand, pointed out that the signatories to the resolution dated 10/2/2002, namely Shahnawaj Gondekar and Mr Jamin Gulkhan had, in fact, filed Misc.Appln.No. 257/2015 for intervention in ABA preferred by respondents No. 2 and 3. In the said application, on oath, the said two persons have stated that resolution dated 10/2/2002 was duly passed thereby proposing to enter into an agreement with Bharat Cellular Ltd for installation of mobile tower on the roof top of the building of the applicant society for cellular services.

5. It further appears that the learned trial Court after taking into consideration the various documents which were produced before it for its consideration, was pleased to grant pre-arrest bail to the respondents no. 2 and 3. The learned trial Court in the impugned order has recorded a specific finding that, it is clear from the report lodged that the copies of resolutions dated 10.2.2002 and 20.5.2002 show that respondents no. 2 and 3 were apprised of the act on behalf of the society for installation of tower on the terrace of the building and the office bearers of the society had agreed to pay

the first installment as commission to the agent. The learned trial Court has also taken into consideration the fact that the respondents no. 2 and 3 have not disputed the fact that they have withdrawn the amount of Rs.1,90,000/- from the bank. After taking into consideration, the aforesaid finding the learned trial Court was proceeded to hold that there is no need to have custodial interrogation of the respondents no. 2 and 3.

6. I have perused the entire record produced before me. I am of the opinion that the learned trial Court while passing the order dated 31.3.2015 has taken into consideration all the relevant necessary facets of the case while coming to the conclusion that the custodial interrogation of the applicants is not necessary. I do not find any perversity and/or irregularity in the order passed by the learned trial Court while granting pre-arrest bail to the respondents no. 2 and 3. The order dated 31.3.2015 does not suffer from any error either in law or on facts, and, therefore, in my considered opinion, the present application is sans of any merits and is dismissed accordingly.

(A.S. GADKARI, J.)