

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1399 OF 2016

Bhushan Kashinath Sarang and Ors.Applicants

V/s.

State of Maharashtra and anr.Respondents

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Mr. A.P. Mundargi, Senior Counsel a/w. Mr. Hrishikesh Mundargi
i/by. Mr. J.S. Bordeshkar, Advocate for the applicant.

Smt. Rutuja Ambekar, APP for respondent, State.

CORAM:- N.W. SAMBRE, J.

DATED :- 20TH DECEMBER, 2016.

P.C. :-

1). The applicants are seeking pre-arrest bail in Crime No. 236 of 2015 registered with D.N. Nagar Police Station for the offences punishable under Sections 379, 406, 420 read with Section 34 Indian Penal Code with Sections 4 and 5 of the Maharashtra Ownership Flat Act, 1963. It is claimed that, the alleged incident which has given rise to lodging of the FIR took place between 2006 to 2010.

2). The prosecution story is, D.N. Nagar Co-operative

Housing Society of which the present applicants are the office bearers entered into a Cluster Development Agreement with M/s. Vaidehi Akash Housing Private Limited, through its proprietorship, Mr. Phondekar. The complainant claimed that, he has invested amount of Rs.7,70,00,000/- with said M/s. Vaidehi Akash Housing Private Limited as Mr. Phondekar has promised him substantial returns either in cash or in the form of developed area in the said cluster development.

3). It is the case of the prosecution against the applicants that, on 3rd October, 2015 there is an agreement between Mr. Phondekar and Mahavir Builders and Developers of the complainant on 3rd October, 2005. The investment, as is claimed by the complainant claimed to be with the consent of the office bearers of the D.N. Nagar Co-operative Housing Society i.e. the present applicants.

4). Since Mr. Phondekar, in view of financial constraints was unable to execute the development work, hence he entered into an agreement with one, Rustomji Realty Private Limited on 4th April, 2007 without disclosing the interest of the complainant. It is then claimed that the said agreement of Rustomji Realty Private Limited with M/s. Vaidehi Akash Housing Private Limited of Mr. Phondekar was further fortified by the D.N. Nagar Housing Society Limited vide document no. 2334 of 2010 executed on February 10, 2010. As a consequence of above agreement between D.N. Nagar Co-operative Housing Society of which the applicants are office

bearers, Rustomji Realty Private Limited and M/s. Vaidehi Aakash Housing Private Limited, the interest of the complainant was jeopardised as his investment, return against the said investment was not honoured resulting into registration of the crime.

5). While trying to make out a case for grant of pre-arrest bail, the learned Senior Counsel for the applicant, Mr. Mundargi, would submit that the parties are already before the Civil Court litigating qua their rights in relation to the property in question. According to him, the contract, if any between the complainant and M/s. Vaidehi Aakash Housing Private Limited is not binding on the present applicant or its Society when they are not signatories to the same. It is also claimed that, the offence alleged, if any is based on documents and for the said purpose, custodial interrogation of the applicant is not warranted. The learned Counsel then would urge that the applicants have deep roots in the Society and are very much available for investigation. As such prayed for pre-arrest bail.

6). The learned APP would urge that, the applicants custodial interrogation is necessary as M/s. Vaidehi Aakash Housing Private Limited has also lodged FIR against the present applicant and Rustomji Realty Private Limited of practising fraud. It is then claimed that even if the offence is based on the contractual relations, the demolition of existing structure carried out by M/s. Vaidehi Aakash Housing Private Limited was without any authority and as such the applicants custodial interrogation is necessary.

7). Having bestowed my thoughts to the submissions made,

it is required to be noted that M/s. Vaidehi Aakash Housing Private Limited entered into an agreement with D.N. Nagar Co-operative Housing Society of which the applicants are the office bearers in December 31, 2005 for cluster development. Admittedly, M/s. Vaidehi Aakash Housing Private Limited went into rough weather due to financial constraint and as such entered into an agreement on April 4, 2007 with Rustomji Realty Private Limited for carrying out cluster development. What could be gathered from the record is but for reference of one of the office bearers in transaction between the complainant and M/s. Vaidehi Aakash Housing Private Limited, there is hardly any material to infer any privity of contract between the complainant and the applicants and D.N Nagar Co-operative Housing Society. In the civil proceedings which are initiated, the said issue is already visited and findings to that effect are recorded.

8). It is then to be noted that, once M/s. Vaidehi Aakash Housing Private Limited has entered into an agreement with Rustomji Realty Private Limited and thereafter pursuant to approval of the MHADA, a tripartite agreement was entered into between M/s. Vaidehi Akash Housing Private Limited, Rustomji and D.N. Nagar Co-operative Housing Society, in my opinion, the said tripartite agreement does not bind the present applicant qua the claim made by the complainant in the FIR.

9). The applicants are named as accused in the FIR pursuant to their status as office bearers of D.N. Nagar Co-operative

Housing Society Ltd. In any case, there was no privity of contract between the applicants or D.N. Nagar Co-operative Housing Society Ltd. with that of the complainant.

10). In this background, in my opinion, there is no need for custodial interrogation of the applicant in the crime in question. As such the application needs to be allowed. In the event of arrest, the applicants be released on P.R. Bond of Rs.25,000/- with one or two sureties in the like amount.

11). The applicants shall attend police station as and when called.

12). The applicants shall not tamper the evidence and/or influence the witnesses in any manner whatsoever.

(N.W. SAMBRE, J)