

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

ANTICIPATORY BAIL APPLICATION NO. 1363 OF 2015

Sudhir Mahabaleshwar Kamat & Ors.	.. Applicants
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL APPLICATION NO. 135 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO. 1363 OF 2015**

Sindh Co-op. Hsg. Soc. Limited	.. Intervener
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IN THE MATTER BETWEEN

Sudhir Mahabaleshwar Kamat & Ors.	.. Applicants
Versus	
The State of Maharashtra	.. Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1395 OF 2015**

Satish Motilal Parikh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL APPLICATION NO. 136 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO. 1395 OF 2015**

Sindh Co-op. Hsg. Soc. Limited	.. Intervener
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IN THE MATTER BETWEEN

Satish Motilal Parikh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

Mr. Abhijeet A. Desai, Advocate for the Applicants in ABA No.1363 of 2015.
 Mr. Aniket U. Nikam, Advocate for the Applicant in ABA No.1395 of 2015.
 Mr. Deepak Thakare, A.P.P. for the Respondent – State.
 Mr. Nandu Phadke for original complainant.

CORAM : N.W. SAMBRE, J.

DATED : 22nd NOVEMBER, 2016.

P.C. :

1 Heard respective counsel and the learned A.P.P.

2 The applicants are seeking pre-arrest bail in Crime No.156 of 2015 for the offences punishable under sections 419, 420, 454, 456, 467, 468, 471 r/w. 34 of the I.P.C.

3 The offence in question have occurred in between 1992 to 06.01.2015.

4 This Court has granted ad-interim protection in favour of the applicants vide order dated 10.09.2015. The learned counsel for the applicant in Anticipatory Bail Application No.1363 of 2015 submits that the applicant Nos.2 and 3 have withdrawn their applications and have thereafter surrendered and released on bail.

5 It is a common submission of the applicants herein that the applicants are falsely implicated in the crime in question. It is claimed that one Yadgar Kharas r/o. Sycunderabad, was owner of the property being Survey No.51, Mauja Aundh, admeasuring 73 Ares, Survey No.1753 plot No.165 area 891 sq. mts., Survey No.1754 plot No.167, area 812 sq. mts.,

Survey No.1765 plot No.166, Area 1050 sq. mts. Plot No.164 survey No.1766 area 3164 plot No.163, Survey No. 1767 area 1636, Survey No.1768 and Survey No.1769.

6 It is the case of the prosecution that for providing accommodation to the migrants from Pakistan, said Co-operative Housing Society at Pune was formed and for them Government acquired land bearing Survey No.51 as is reflected in the Bombay Governor Gazette dated 08.11.1949. It is further claimed by the prosecution that part one of the survey No.51 consisting of 29 gunthas Hissa No.2 admeasuring 18 gunthas, Hissa No.3 1 acre 4 gunthas and Hissa No.4 10 gunthas total 2 acre 19 gunthas land was acquired.

7 It is claimed that as per the award under section 11 of the Land Acquisition Act out of Survey No.51 Hissa No.1, 29 gunthas land was acquired from original owner Buazorjee Jamshetji Kharas and was handed over to the society and sanad to that effect was issued in favour of the society. The remaining land as per development plan was reserved for the Corporation to the extent of 29 gunthas.

8 It is the case of the prosecution that so as to illegally acquired the land in question of the society, one Ganesh Disulal Saunger has executed power of attorney in favour of the applicants in Application No.1363 of 2015 by presenting forged 7/12 extract. It is also claimed that the alleged agreement to sale was executed by Yadgar in favour of Ganesh Saunger who in term executed power of attorney in favour of the applicants. Accused Ganesh then transferred land in question on 06.01.2015, through the said power of attorney holder resulting into

registration of the crime in question. The sum and substance of the allegation in short could be inferred is without any authority the applicants have dealt with the property in question. In another application i.e. 1395 of 2015, the applicant Satish has purchased the property in question from the power of attorney holder who were not having any title.

9 While trying to make out the case for grant of pre-arrest bail, the learned counsel for the applicant submits that apart from the fact that the applicants were on ad-interim protection from this Court for last about 15 months, the applicants are very much available for the investigation and have not transgressed their limits. They have clearly acted based on the power of attorney executed in their favour. It is also claimed that entire alleged crime is based on papers for which custodial interrogation is not required.

10 The next limb of submission in Anticipatory Bail Application No.1395 of 2015 is that the applicant himself is a victim of the alleged fraud, as according to him, he has lost substantial amount in transaction in question without any benefits. Common submission is made that the entire offence is based on documents and as such the custodial interrogation is not necessary.

11 The learned A.P.P. while strenuously opposing the application who was assisted by the learned counsel for intervener Shri Phadke would urge that in the agreement to sale and the sale deed the in property was under valued. Though the stamp duty of around Rs.1 lakh and above is paid still the consideration offered was meager i.e. some Rs.30 lakh. According to him, this speaks of prima facie involvement of the accused

persons in the crime in any question. According to him, the 7/12 extract, death certificate are fraudulently used by the applicants for the commission of crime in question. Predecessor in title of the applicants are not original Kharas but are Daruwala which fact was well within the knowledge of the applicant as there have purchased the property of legal aid. Shri Phadke would urge that already the complainant has initiated Civil Suit and one of the accused in the present case who has executed the sale deed is a minor being, juvenile in conflict with law was released by the competent authority is speaks of an voice indeed in the matter. They prayed for rejection.

12 At the outset it is required to be considered that the applicants are under the ad-interim protection of this Court for a period of more than one year and has co-operated the Investigating Officer in the investigation. The entire crime is based on the documents which are very much available with the Investigating Officer so did the applicants are available for investigation and prosecution. Apart from above, there appears to be civil suit pending before the competent Court wherein they have assaulted their title to the suit property in question and as such the matter is subjudiced before the competent civil Court. The fact that the applicants in the first bail application were the power of attorney holder of the original owner viz; Ganesh and the applicant in the second application is purchaser of the property in no way could be prima facie held responsible for the offence in question as the offence if any, has originated from Ganesh Saunder and the applicants are not the originator of the crime. A serious dispute for the identity of the original owner viz; Yadgar Kharas, were Barjorjee Jamshetji Kharas is raised. From the record of prosecution, claim that it is Daruwala's who executed the documents in favour of applicants and not

the original Kharas particularly when the Jamshet has expired in 1974, is also an issue of investigation. However, there is hardly any material on the record to infer that the applicants had knowledge about the said issue and with criminal motive has committed the crime in question.

13 In view thereof, application needs to be allowed. The applicant be released on bail on executing P.R. Bond of Rs.1,00,000/- with one or two sureties in the like amount. The applicant shall attend police station from the next week i.e. on 5th, 8th and 13th December, 2016 between 10.00 a.m. to 12.00 noon and thereafter as and when called. The applicant shall not tamper with the evidence or influence the witnesses.

(N.W. SAMBRE, J.)