

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1767 OF 2016

1. Urmila Ashok Pandey
2. Ashok Ramnarayan Pandey

.....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Kapil Dave i/b Mr. Santosh D. Thakur Advocate for Applicant.
Mr. R. M. Pethe APP for the State.
Mr. S. V. Bile A.P.I. Kalamboli Police Station

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : OCTOBER 13, 2016.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in crime no. 199 of 2016 registered at Kalamboli police station for offence punishable under sections 406, 420, 465, 471 r/w 34 of the Indian Penal Code.

2) It is the case of the prosecution that on 13/09/2016, Bhavani Dube lodged a report at the police station alleging therein that one Shri. Vhatkar was the original owner of flat no. D-62, LIG II, Sector 2E, Kalamboli, New Bombay. The flat was allotted to Mr. Vhatkar through draw of CIDCO

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Authority. Mr. Vhatkar could not have sold the flat in favour of complainant and therefore, he had executed a Power of Attorney in his favour in the year 1986. In the year 1993 or so, the complainant was to leave for Germany and therefore, he had entrusted the possession of the said flat to his brother Suryakumar Dube. That Suryakumar Dube had given the said flat on rent to the present applicants. There were cordial relations between Suryakumar Dube and present applicants. According to the complainant, applicants have forged and fabricated an agreement between Suryakumar Dube and the applicants have shown that they have purchased the flat from the brother of the complainant.

3) Perused papers of investigation, more particularly, the statement of Suryakumar Dube. It is his contention that he was having cordial relations with the present applicants. They used to borrow money from each other in times of need and they used to also return the same each other promptly. They had not maintained the accounts. In the year 2005, he had insisted upon the applicants to return the amount. Applicants had threatened him of dire consequences. In the year 2008, he had realized that applicants had shown an agreement to sale between Suryakumar Dube and present applicants. He had

promptly informed about the same to his brother i.e. the complainant. Since 2008, complainant had not taken any steps. In the year 2016, he had filed application under Right to Information Act and had learnt that applicants had forged the signature of his brother and were in illegal possession of the said property.

4) Perused the statement of the original owner Mr. Vhatkar. He had stated that complainant informed him that there was some transaction between his brother Dube and present applicants and that he had requested Mr. Vhatkar to sign the documents once again to show that the original complainant was in possession of the said premises and Mr. Vhatkar had flatly denied to oblige. It appears from papers of investigation that in the year 2015 itself, statement of the present applicants was recorded by the police. They had disclosed to the police that there was an agreement between Suryakumar Dube and present applicants and had also handed over certain documents to the police. It appears that original complainant Mr. Bhavani Dube has filed writ petition no. 306 of 2016 in the month of January 2016 and has prayed that respondent nos. 1 to 3 be directed to register F.I.R. against respondent nos. 4 & 5 i.e. present applicants. It is pertinent to note that till today, no effective orders are passed

in the said writ petition. However, offence is registered on 13/09/2016.

5) The learned APP has vehemently opposed the grant of pre-arrest bail in favour of present applicants on the ground that it appears that they have committed forgery of the documents upon which they are placing implicit reliance.

6) It is pertinent to note that complainant had knowledge of the alleged act of applicants in the year 2008 itself.

7) The learned counsel for the applicants submits that in these circumstances, the silence of the complainant for the past 8 years, speaks volumes for itself.

8) Be that as it may, taking into consideration the nature of allegations and the fact that there is no plausible explanation for the inordinate delay in filing F.I.R., applicants deserve to be granted pre-arrest bail. It is made clear that the observations made herein above are *prima facie* in nature and restricted to consideration of an application under section 438 of the Code of Criminal Procedure, 1973 and shall not be considered for the purpose of quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicants be enlarged on bail on furnishing P.R. bond in the sum of Rs. 50,000/- each with one or two solvent sureties in the like amount.
- (iii) Applicant no. 2 shall report to the concerned police station on 24th, 25th, and 26th of October 2016 between 10.00 a.m. to 12.00 noon and co-operate with the investigating agency to the best of his capacity.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)