HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1189 of 2016

1. Mohd. Yusuf Raza S/o Mohd. Ishaque, Aged About 56 Years Par, - M/s City Engineers & Builders, Raipur R/o House No. 82 Anand Nagar, Telibandha, Raipur Chhattisgarh

2. Smt. Nafees Parveen, W/o Mohd. Yusuf Raza, Aged About 50 Years R/o House No. 82 Anand Nagar, Telibandha, Raipur Chhattisgarh

3. Mohd. Ahmed Raza, S/o Mohd. Yusuf Raza, Aged About 27 Years R/o House No. 82 Anand Nagar, Telibandha, Raipur Chhattisgarh

4. Shailendra Rathore, S/o Shri Narayan Rathore, Aged About 54 Years R/o House No. 82 Anand Nagar, Telibandha, Raipur Chhattisgarh

5. Smt. Rima Rathore, W/o Shri Shailendra Rathore, Aged About 47 Years R/o House No. 82 Anand Nagar, Telibandha, Raipur Chhattisgarh **--- Applicants**

Versus

1. Police Station Civil Lines, Raipur Tahsil & District Raipur Chhattisgarh

2. State of Chhattisgarh Through The S.H.O. Police Station Civil Lines, Raipur Tahsil & District Raipur Chhattisgarh **--- Respondents**

For the applicant : Mr. B.P.Sharma with Mr. Raza Ali, Adv.
For the State : Mr. Sangharsh Pandey, Panel Lawyer.
For the objector : Mr. Maneesh Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

17.02.2017

1. Apprehending arrest in connection with Crime No. 659/2016 registered at Police Station Civil Lines, Raipur (C.G) for the offences punishable u/ss 420, 467, 468, 471, 120-B read with section 34 IPC, the applicants have filed this application u/s 438 of the Code of Criminal

Procedure.

2. As per the prosecution case, M/s. R.K. Jain Constructions through its proprietor had applied for a loan on 04.03.2010 from UCO Bank to raise superstructure i.e., multi storeyed apartments over different Khasra numbers situated at village Amlidih, Raipur. Subsequently the said loan was obtained from Uco Bank and constructed Khushi Towers. Thereafter the loanee made the default in making repayment of loan. Consequently the Bank initiated the proceedings under the provisions of the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, Act, 2002* (for short the "SARFAESI Act, 2002") for recovery of outstanding dues and took possession of the building on 08.08.2013. Later on, M/s. J.M. Financial Assets and Reconstruction Company Private Limited, Mumbai was authorized on behalf of the Uco Bank for the sale of the property and recovery of dues and after publication of the auction notice on 19.10.2015, auction was made on 25.01.2016. The apartments were named as Khushi Enclave and Khushi Towers. The present applicants being partners have purchased the properties on behalf of M/s. C.T. Engineers and Builders for Rs.2,25,00,786/- from the J.M. Financial Asset Reconstruction Co. Pvt. Ltd. It is the case of prosecution that the particulars of property was not described and the property was valued at Rs.35 crores whereon the stamp duty of Rs.2 crores was leviable. Subsequently the amendment of purchase area of land was made by

amendment by amendment deed and it was described as 29432 sqft which was of 19 acres wherein the stamp duty of Rs.16 lakhs and odd was payable apart from other registration charges whereas the purchase was made for Rs.2,25,00,786/- whereas the property was initially purchased by the J.M. Financial and Reconstruction of Assets Company for Rs.4,02,18,206. Therefore, the petitioners have played fraud by purchasing the property at a low price and thereby evaded the payment of stamp duty.

3. Learned counsel for the applicants would submit that the petitioners are the purchasers of property auctioned in exercise of provisions of SARFAESI Act and they have purchased the property for a valuable consideration. It is submitted that it cannot be contended by the prosecution that the applicants have committed fraud since the purchases were made at an open auction and after bidding if the property has been purchased for the alleged low price, it cannot be termed as fraud since it was an distress sale. It is further contended that the occupiers of the building would not be affected otherwise than in due course of law and the persons to whom initially the sale was made by R.K. Jain that is the objector Maina Prajapati, the right could have been decided in a different forum and the applicants having purchased the property for a valuable consideration in an auction when the sale is made under SARFAESI Act, the same cannot be said to be fraud. It is further submitted that in respect of the stamp duty if the State

Government feels that necessary property is undervalued and the requisite stamp duty has not been paid, then the course is very open to the State to make recovery under the specified Act by attachment or otherwise but in any case no criminality can be attributed to the present applicants, therefore, they may be enlarged on anticipatory bail.

4. Per contra, learned State Counsel and learned counsel for the objector oppose the prayer for grant of anticipatory bail.

5. Learned State Counsel would submit that initially the purchase was made from 25.01.2016 wherein the description of property was not shown which mean to include the entire area more than one lakh square feet of land. However, it was subsequently amended to 29,432 sqft wherein two apartments i.e., Khushi Enclave and Khushi Towers situate. It is stated that the initially the said auction sale was made to avoid the payment of stamp duty and registration charges thereby the offence has been committed.

6. Learned counsel appearing on behalf of objector Maina Prajapati and Gopi Krishnani would submit that the applicants have played fraud by purchasing the property worth more than Rs.19 crores at a very low price of Rs.2 crores and further have tried to forcibly evict the inmates. Since the objector Maina Prajapati has purchased the property after obtaining the loan from PNB Housing on 08.02.2010 which was prior to purchase and mortgage created by R.K. Jain builders to UCO Bank

as the mortgage to Uco Bank by R.K. Jain was subsequently created on 04.03.2010, therefore, the applicants may not be enlarged on bail.

7. Perused the case diary documents.

8. Perusal of the documents would show that the applicants are purchasers who purchased the property in auction sale when the recovery proceeding was initiated by coercive process under the SARFAESI Act. The purchase of property for Rs.2,25,00,000/- when it was agreed to be sold by the assignee of the Uco Bank i.e., J.M. Financial Assets and Reconstruction Company cannot be questioned by a third party as it was a contract interse and offer in acceptance between seller and purchaser. If the State Government feels it expedient that the property was under valued and requisite stamp duty has not been paid, it has power to recover the deficit stamp duty and registration charges after evaluating the property. The objection of Gopi Krishnani is a matter of concern as prima facie it do not show that he has locus to object on the ground that his future business is being hampered. Prima facie the facts would lead to show that the purchases have been made under the SARFAESI Act and all the documents if are seen collectively it would lead to show that the custodial interrogation may not be required as all the transactions are emerging out of statutory procedure which has been followed.

9. Consequently, in the facts and circumstances, following the case law laid down in case of ***2016 (1) SCC 152 Badresh Bipinbhai Sheth Vs. State of Gujrat*** I am

inclined to allow this bail application.

10. Accordingly, the application is allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offence, they shall be released on bail by the officer arresting them on each of them executing a personal bond in sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the arresting officer or the concerned Investigating Officer. The applicants shall also abide by the following conditions :-

(i) that they shall make themselves available for interrogation before the investigating officer as and when required;

(ii) that they shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any police officer;

(iii) that they shall not act in any manner which will be prejudicial to fair and expeditious trial; and

(iv) that they shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

C.c. as per rules.

Sd/-

GOUTAM BHADURI
JUDGE

Rao