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

ANTICIPATORY BAIL APPLICATION NO.408 OF 2017

Sunil Nair	...Applicant
Versus	
The State of Maharashtra	...Respondent

***WITH
CRIMINAL APPLICATION NO.230 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO.408 OF 2017***

Manish Kamalakar Patil	...Intervener (Original Complainant)
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IN THE MATTER BETWEEN

Sunil Nair	...Applicant
Versus	
The State of Maharashtra	...Respondent

***WITH
ANTICIPATORY BAIL APPLICATION NO.441 OF 2017***

1. Mahadev Harishchandra Walekar	
2. Harishchandra Janardan Walekar	...Applicants
Versus	
The State of Maharashtra	...Respondent

Mr.Shirish Gupte, Senior Counsel with Mr.A.K.Thool, Mr.Ram Kakkar and Mr.Amey Mirajkar i/b AZB & Partners, for the Applicant in ABA No.408 of 2017.

Mr.M.S.Mohite i/b Mr.R.A.More, for the Applicants in ABA No.441 of 2017.

Mr.Prashant Jadhav, A.P.P for the Respondent-State.

Mr.K.S.Patil, for the Intervener/Original Complainant in APPP/230/2017.

API – D.T.Mahadik, EOW Unit – II, Navi Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 13th JULY, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. By these applications, the applicants seek pre-arrest bail in connection with C.R. No. 56 of 2017 registered with the Kharghar Police Station, Navi Mumbai, for the alleged offences punishable under Sections 420, 465, 467, 468, 471, 474 r/w 34 of the Indian Penal Code.
3. Learned Senior Counsel for the Applicant – Sunil Nair, in Anticipatory Bail Application No.408 of 2017 submitted that the allegations as against the applicant are false and baseless. He submits that although, the applicant was the Power of Attorney holder of 15 original owners of the disputed land, the applicant was not a party to the subsequent Deed of Conveyance entered into between the original owners and

Outreach Mercantile Company Private Limited (“Outreach”) through its Director, Darius Khambata (“Darius”). He submitted that the applicant was only a witness to the said Deed of Conveyance. He submitted that the document i.e. the Settlement/Receipt (तडजोड पावती) was executed in the year 2014, however, no grievance was made by the complainant as against the applicant, till 2016. He further submitted that the only allegation as against the applicant is, that he did not allow the transactions to go through, between the original owners, the complainant and Varunraj Realtors Private Limited (“Varunraj”).

4. Learned Counsel for the Applicants in Anticipatory Bail Application No.441 of 2017 submitted that the applicants have been falsely implicated in the sad case. He submitted that no transaction has taken place between the applicants and the complainant. He further submits that the applicants without prejudice to their rights and contentions, are ready and willing to deposit an amount received by both of them i.e. Rs.20 lakhs each, in the Registry of the trial Court to show their bonafides. He further submitted that the accounts of both the applicants have been freezed and that there is an amount of Rs.57 lakhs in Applicant No.1's account and an

amount of Rs.21 lakhs in Applicant No.2's account. He further submits that infact, it is the complainant who has cheated the applicants, who are the original owners of the land.

5. Learned APP opposed the applications. He submitted that the custody of the applicant – Sunil Nair is required for recovery of the stamp paper which is of the year 2014. He submitted that the applicant – Sunil Nair, had promised the complainant that the land would be sold to him and thereafter backed off, pursuant to which, the original owners entered into a transaction in favour of Ms.Modi. He further submitted that one stamp paper was purchased by Varunraj in the name of Ashish Mandale, however the applicant – Sunil Nair replaced the said stamp paper. He does not dispute the fact, that except the discrepancies in the stamp paper purchase details, stamp paper number and signatures on the documents, the written contents in both the stamp papers are identical.

6. Learned Counsel for the Original Complainant, Mr.Patil, supported the learned APP.

7. Perused the papers. The dispute is with regard to a property bearing Gat No.52, ad-measuring 1188 acres, owned by the applicants – Walekars; and Giris'. The said land is situated at Alibag. It appears that a Development Agreement dated 1st August, 2007, was entered into, between the original farmers including the applicants – Mahadev Harishchandra Walekar and Harishchandra Janardan Walekar and Outreach Mercantile Company Private Limited (“Outreach”), private limited company registered in Mumbai, through its Director, Darius Khambata (“Darius”). The applicant – Sunil Nair was given the power of attorney by all the original land owners. On 4th January, 2011, a Deed of Conveyance was executed between the original owners as the vendors through the Applicant – Sunil Nair, being the Power of Attorney Holder, and Outreach as the Confirming Party and Darius, giving ownership and development rights to Darius. It appears that the applicants – Mahadev Harishchandra Walekar and Harishchandra Janardan Walekar took objection as Darius was not an agriculturist. The Tahsildar, Alibag, upheld the said objection. Some time in 2011, a dispute arose between some of the original owners. It appears that during the pendency of this dispute Rajan Giri, one of the co-owners of the said property along with Manish Kamlakar Patil

(complainant) approached the applicant - Sunil Nair with a proposal that a local builder operating out of Alibag was interested in purchasing the property. It also appears that Rajan Giri carried out the negotiations with farmers in respect of the said property, pursuant to which, Darius (of Outreach) had indicated his willingness to sell the property for approximately Rs.22 crores, subject to payment being made within a period of six months and necessary documents being executed. Admittedly, no document was executed by which any right, title or interest over the property was created or even agreed to be passed on to the complainant. On 26th November, 2014, a 'Settlement/Receipt' was entered into between Mahadev Harishchandra Walekar, Harishchandra Janardan Walekar and Rajan Giri. The said 'Settlement/Receipt' records certain disputes raised in respect of transfer of property in favour of Darius, since Darius was not an agriculturalist. The 'Settlement/Receipt' further records that the applicants - Mahadev Harishchandra Walekar, Harishchandra Janardan Walekar and Rajan Giri on behalf of the original owners had agreed to transfer the property in favour of Varunraj (complainant is one of the partners of Varunraj). In the 'Settlement/Receipt', it is recorded that the complainant/Varunraj had paid an amount of Rs.20 lakhs to each of the

aforesaid 3 individuals i.e. the applicants – Mahadev Harishchandra Walekar, Harishchandra Janardan Walekar and Rajan Giri and had further agreed to pay them Rs.1.10 crores each, as compensation to relinquish their objection in regard to the said property and hand over the said property, to whomsoever the purchaser would appoint. It, *prima facie*, appears that development and ownership rights remained with Darius and that no right or interest was ever created in favour of the complainant. Thereafter, in 2016, by an agreement, Darius transferred the ownership of the property in favour of the original owners and the Development Rights over the property in favour of Outreach, and thereafter, Outreach and the original owners transferred the ownership and development rights in favour of one Ms.Modi. It is pertinent to note, that the said Registered Agreement has been signed by the original owners including Rajan Giri. It also appears that the applicant – Sunil Nair has signed the said agreement as a witness. The allegation of the complainant is that the stamp paper was replaced by the applicant – Sunil Nair, in place of the stamp paper given by Varunraj. *Prima facie*, the contents in both the ‘Settlement/Receipt’ are similar and identical. The said alleged stamp papers are stated to be of the year 2014. No complaint was made by the complainant from 2014-2016. As far as the

applicants – Mahadev Harishchandra Walekar and Harishchandra Janardan Walekar are concerned, both their accounts have been frozen. Mr.Mohite, learned counsel for the applicants – Mahadev Harishchandra Walekar, Harishchandra Janardan Walekar submits that the aforesaid applicants are ready to deposit the said amount of Rs.20 lakhs each, without prejudice to their rights and contentions, whenever the accounts are de-freezed. He requests that the applicants also be granted liberty to file an appropriate application for defreezing the accounts of the applicants, for the balance amount, after the said amount of Rs.20 lakhs is retained.

8. Be that as it may, in the peculiar facts of this case, the custodial interrogation of the applicant - Sunil Nair in Anticipatory Bail Application No.408 of 2017 and applicants – Mahadev Harishchandra Walekar, Harishchandra Janardan Walekar in Anticipatory Bail Application No.441 of 2017, is not required. The applications are accordingly allowed and the aforesaid applicants are granted pre-arrest bail on the following terms and conditions:-

ORDER

(i) In the event of the arrest, the applicants be enlarged on bail on executing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount ;

(ii) The applicants shall report to the Investigating Officer of the concerned Police Station as and when called, till the filing of the charge-sheet.

9. The Applications are allowed in the aforesaid terms and are accordingly disposed of.

10. The applicants – Mahadev Harishchandra Walekar and Harishchandra Janardan Walekar in Anticipatory Bail Application No.441 of 2017, are always at liberty, to file an appropriate application for defreezing their accounts, before the appropriate Court.

11. It is made clear that the observations made herein are *prima facie* and are confined to these applications.

12. In view of the disposal of the Anticipatory Bail Application No.408 of 2017, the Intervention Application being Criminal Application No.230 of 2017 does not survive and the same is also disposed of.

13. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)