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

ANTICIPATORY BAIL APPLICATION NO. 557 OF 2017

Anu D. Pereira

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr. Satyam R. Dubey for the Applicant.

Mr. Arfan Sait, APP for the Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 30th MARCH, 2017.

P. C. :

1. The applicant is apprehending arrest in C. R. No. I-578 of 2016 dated 18.10.2016 registered with Tulinj Police Station, District Palghar under Sections 452, 420 read with 34 of the Indian Penal Code.

2. The FIR is lodged by Shrimati Mandakini Kashinath Dalvi aged about 70 years. It is stated that her son, namely, Ganesh Kashinath Dalvi had purchased a flat bearing Room No.303 in Avon Shashi Heights, Nariya Nagar, Moregaon, Nallasopara from the builder Avon Contracting represented by and through its partner Shri Anupam A. Giri and Shri Harish Phartyal for an amount of Rs.8,04,100/- by a registered sale deed dated 30.01.2012. Her son Ganesh was residing in the said premises till his demise on 25.05.2012. After the demise of her son, the complainant used to visit the said premises for cleaning and for its maintenance. That on 19.04.2014 the builder, namely, Shri Harish Phartyal started

pressurizing the complainant for vacating the said premises as he intended to sell the same for Rs.5,00,000/- to somebody else. That on 09.10.2016 when the complainant visited the said premises, she found that one Smt. Punam Asif Shaikh was in the said room. She realized that the lock of the said room is broken open and Smt. Punam Asif Shaikh has started residing therein. On inquiry, Smt. Punam Asif Shaikh informed to the complainant that the said room is belonging to the applicant and the applicant has given her the said room for residence. In the premise, the FIR is lodged.

3. Learned counsel for the applicant submitted that the applicant had nothing to do with the act of criminal trespass done by either Shri. Harish Phartyal (co-accused) or Smt. Punam Asif Shaikh. He submitted that the applicant is bonafide purchaser of the suit property and by executing an agreement for sale dated 30.05.2015 she purchased the suit property from Shri Harish Phartyal. He submitted that even if the complainant is having any grievance, it should be against Shri Harish Phartyal and his client has nothing to do with the entire transaction. He therefore prayed that the applicant may be granted pre-arrest bail.

4. I have perused the documents annexed to the application and the record of investigation of the present crime produced by the learned APP.

5. It is to be noted here that the alleged agreement for sale dated 30.05.2015 executed between Mr. Harish Phartyal, the proprietor of M/s. Avon Contracting and the applicant herein is an unregistered

document allegedly executed on a stamp paper of Rs.100/-. According to me, it was incumbent on the part of the applicant before purchasing the said property from the said builder (co-accused) to take search of the said property either from the Office of the Sub-Registrar of Assurances having territorial jurisdiction or from other Government Agencies and the applicant cannot be permitted to raise the specious plea that she bonafide purchased the said property from the builder on his representation made to her. The complainant is about 70 years of age, she is having in her possession registered sale deed dated 30.01.2012 which was executed by the builder in favour of her deceased son, namely, Ganesh Kashinath Dalvi. The complainant has no reason to lodge any false complaint against the applicant and other accused persons. After perusing the FIR and other record of investigation it is clear that the applicant along with other accused persons has indulged into committing the crime as contemplated under Sections 452, 420 read with 34 of the Indian Penal Code.

6. After taking into consideration the serious allegations against the applicant, the gravity of the offence and the need for custodial interrogation of the applicant to unearth the entire truth behind the crime, this Court is of view that the applicant does not deserve to be protected by way of pre-arrest bail.

7. The application being sans of any merit, is accordingly, rejected.

[A. S. GADKARI, J.]