

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1736 OF 2017

ASIF AINUL HAQUE SIDDIQUI)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Usman Chisty i/b. Mr.Irfan Shaikh, Advocate for the Applicant.

Mr.Rushikesh Pethe, APP for the Respondent – State.

Mr.S.V.Marwadi and Mr.Rushit Thakkar, Advocate for the Original Complainant.

Mr.Dayanand Jadhav, A.P.I., Kurla Police Station, present in court.

CORAM : A. M. BADAR, J.

DATE : 3rd OCTOBER 2017

P.C. :

1 The applicant / accused in Crime No.341 of 2017 for offences punishable under Sections 448, 452, 188, 427, 506 read with Section 34 of the Indian Penal Code, registered with Police Station Kurla, by this application is seeking pre-arrest bail.

2 Though this is first hearing of the application, the learned APP as well as the learned advocate for the First Informant had shown their willingness to get the application decided at the threshold itself and therefore it was taken up for hearing and disposal.

3 Heard the learned advocate appearing for the applicant / accused. By pointing out rent receipts as well as tenancy agreement, the learned advocate for the applicant / accused argued that, infact, possession of shop blocks was with the applicant / accused, his father and wife being allottee of shop blocks nos.101, 104 and 106 of Zainee Complex, owned by Dawoodi Bohra Masjid and Qabrastan Trust, and therefore, custodial interrogation of the applicant / accused is not warranted.

4 It is further argued that there was dispute between the Trust and the First Informant / contractor in allotment of shop blocks and the applicant / accused was unnecessary roped in their

dispute.

5 I have heard the learned APP. The learned APP drew my attention to statements of accused persons recorded by the Investigator as well as the statement of trustee named Murtuza Jawadwala and submitted that record of investigation shows that the present applicant / accused had broke open the first floor door of the shop complex.

6 I have heard the learned advocate appearing for the First Informant. He submitted that the entire documents in the form of rent receipts and tenancy agreements are false as construction was going on, on June 2017, and there was no question of executing tenancy agreements and rent receipts in favour of allottees. He further submitted that possession was very much with the First Informant and there was an attempt to take forcible possession by breaking open the lock of the complex, despite order of the learned Judge of the City Civil Court at Mumbai, directing the parties to maintain status-quo.

7 I have carefully considered the rival submissions. The question which is required to be examined in the instant case is whether custodial interrogation of the present applicant / accused is warranted or not. The documents placed on record show that owner of the property i.e. Dawoodi Bohra Masjid and Qabrastan Trust had executed tenancy agreements in favour of relatives of the present applicant / accused. The present applicant / accused is not a party to the suit in which interim order is passed. Association of tenants on 27th July 2017 i.e. even prior to lodging FIR in question, had send a legal notice to owner of the property i.e. Dawoodi Bohra Masjid and Qabrastan Trust. This document is in the nature of *ante litem motam*, as at the relevant time, the FIR was not even lodged by the contractor i.e. the First Informant. Paragraph 4 of the legal notice shows that though there was delay, possession of entire market i.e. ground + first floor consisting of 61 shops came to be given to the tenants, but still major work of repairs is not completed. Tenants through this legal notice averred

that there are several flaws and defects in construction of shop blocks. Along with this legal notice, list of tenants who were in possession of shop blocks came to be annexed. Entry no.32 of that list shows that Mohd. Aslam Siddiqui was in possession of Shop No.104, 105 and 106. Undisputedly, relatives of the present applicant / accused are allotted shop block nos.104, 105 and 106. In the light of this material on record, it will have to be examined at the stage of trial whether possession was given prior to lodging the FIR and whether the First Informant had subsequently put the lock on the first floor of shop complex.

8 The fact situation emerging on record as discussed in fore going paragraphs does not warrant custodial interrogation of the applicant / accused in the present application and therefore the order :

ORDER

- i) The application is allowed.
- ii) In the event of his arrest in Crime No.341 of 2017, registered with Police Station Kurla at the instance of

Gulfam Ahmed Samani, the applicant / accused shall be released on bail on his executing P.R.Bond in the sum of Rs.15,000/-, and on furnishing surety in like amount.

iii) The applicant / accused shall attend the concerned Police Station on every first and third Monday of each calendar month, between 11.00 a.m. and 1.00 p.m., till filing of the charge-sheet as well as make himself available for interrogation, as and when required by the Investigating Officer.

iv) The applicant / accused 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 from disclosing such facts to the court or to the Police Officer.

v) The applicant / accused shall not leave India without the prior permission of the Court.

(A. M. BADAR, J.)