

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.325 OF 2018
WITH
CRIMINAL APPLICATION NO.224 OF 2018

Shri.Vasanji Umershi Chheda and ors. ...Applicants.

Vs.

The State of Maharashtra ...Respondent.

Mr. Akhilesh Dubey with V.R. Mishra, Samir Singh, Uttam Dubey i/by M/s. Law Counsellors for the applicants.

Mr. Shekhar Ingavale for the Intervener.

Mr. Ameet Palkar, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.

DATE : 6th June, 2018

oPC.

1. By an Order dated 21.2.2018 the applicants were granted interim relief.
2. Heard the learned counsel for the applicants at length, the learned counsel for the first informant and the learned APP. Perused the record of investigation.
3. This matter was heard in the morning session. During the course of arguments some unpleasant events took place in the Court and therefore, the learned counsel for the applicants has now tendered unconditional apology

in writing. Same is taken on record and marked "X" for identification. In view of the unconditional apology tendered by the learned counsel for the applicant matter was again heard on merits.

4. The first information report is lodged by Shri. Vipul R. Veera. It is the prosecution case that, the applicants being the owners of M/s. Sonal Developers after accepting consideration for Flat No. D-61 handed over its possession to the first informant on 18.11.2006 and thereafter the first informant locked the said premises by putting his own lock. It is alleged that on 8.6.2017 the applicants broke open the lock of the said premises and committed criminal trespass in the said premises. It is also alleged that the applicants further sold the said flat to Mr. Rajesh Sonkar by accepting Rs.5.00 lakhs. In the premise, the first information report is lodged.

5. The learned counsel appearing for the applicants submitted that there are several monetary transactions between the first informant on one hand and the applicants on the other hand. It is submitted that the first informant is

in the business of providing finance and 2 to 3 other flats were kept as security with the first informant. It is submitted that Flat No. D-61 was never given either as security or in possession of the first informant and it is the first informant who has committed trespass in the property. He further submitted that the applicants had earlier lodged complaint against the informant with the police, however, the police did not act upon the said complaint of the applicants. He submitted that the present crime as registered against the applicants is a false case and the applicants have been roped with malafide intention. He therefore prayed that the applicants may be protected by pre-arrest bail.

6. Per contra, the learned counsel appearing for the first informant and the learned APP opposed the application. The learned counsel for the first informant submitted that, by the allotment letter dated 18.11.2006 issued by the firm of the applicants namely M/s. Sonal Developers, have allotted five flats to the first informant by accepting valuable consideration. He further submitted that

out of the said five flats the informant has already sold two flats and balance three flats are in possession of the informant. He submitted that CCTV footage of the said building namely 'Aaskini' lying and situated at Koparkhairne, Navi Mumbai would speak for itself. He submitted that the applicants have committed criminal trespass in the property of the first informant and therefore, prayed that the present application may be rejected.

7. The record indicts that by an allotment letter dated 18.11.2006 the firm of the applicants allotted five flats to the first informant and also simultaneously handed over possession of the same to him. The record indicates that the applicants along with other accused persons on 8.6.2017 broke open the lock of the Flat D-61 and have committed criminal trespass therein. It further appears from the first information report that the applicants have further sold the said flat NO.D-61 to Mr. Rajesh Sonkar by accepting Rs.5.00 lakhs as advance payment.

8. After perusing the entire record it appears that no specific overt act is attributed to applicant No.4 Manish R.

Chheda and only because he is partner of the said firm he has been impleaded in the present crime. In my view he is entitled to be protected by pre arrest bail.

As far as Applicant No.1 Vasanji U. Chheda is concerned, he is aged about 86 years as of today. It further appears that the allegation against him of criminal trespass is an exaggerated version. After taking into consideration his dotage, this Court is of the considered view that, the custodial interrogation of the applicant No.1 is unwarranted and he deserves to be protected by pre arrest bail.

In view of above, the application of Applicant No.1 Vasanji Chheda and Applicant No.4 Manish Chheda for pre arrest bail is allowed.

9. As far as Applicant No.2 Nemchand Chheda and Applicant No.3 Kaushik Chheda are concerned the record indicates that as per the investigation carried out till today prima facie there is sufficient material to indicate their complicity in the present crime and for further investigation their custodial interrogation is necessary with

a view to unearth the entire truth behind the crime, so also to trace out the other accused persons who helped them in committing the present crime.

10. In view thereof the application of Applicant No.2 Nemchand Chheda and Applicant No.3 Kaushik Chheda is hereby rejected.

Hence, the following order.

a) The application of Applicant No.1 Vasanji Chheda and Mr. Manish Chheda is hereby allowed on the following terms and conditions.

i) In the event of arrest of the applicants namely Mr. Vasanji Chheda and Mr. Manish Chheda in CR No.321 of 2017 registered with Koparkhairnae Police Station, Navi Mumbai, the applicants be released on bail on their furnishing PR bond of Rs.25,000/- each with one or two separate solvent local sureties in the like amount.

ii) The said applicants shall not tamper with the evidence and/or pressurize the prosecution witnesses.

b) The application for pre-arrest bail of Applicant No.2 Mr. Nemchand Chheda and Applicant No.3 Mr. Kaushik

Chheda is hereby rejected.

- i) Application is partly allowed in the aforesaid terms.

(A.S.GADKARI, J.)