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

ANTICIPATORY BAIL APPLICATION NO. 454 OF 2018

Keshavji Nonghabhai Shah & Anr.

..Applicants

Vs

The State of Maharashtra &An.

..Respondents

**WITH
CRIMINAL APPLICATION NO. 289 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 454 OF 2018**

Dinesh G. Tahiliani

...Applicant/Intervener

Mr. Niranjan Mundargi I/b P.A. Bhangale for applicant.

Ms. A.A. Takalkar, APP for State.

Ms. Chitra Pawar for respondent No.2.

Mr. M.H. Ramsinghani for Intervener in APPP No.289 of 2018.

CORAM : A.S.GADKARI, J.

DATE : 20th July 2018.

P.C.:

1] The applicants are apprehending arrest in CR No.195 of 2017 dated 1.6.2017 registered with Matunga Police Station, Mumbai under sections 420, 406 read with 34 of the Indian Penal Code and under sections 3 and 10 of Maharashtra Ownership Flats Act, 1963.

2] Heard Mr. Mudargi, the learned counsel for the applicants, Ms. Pawar, the learned counsel for the first informant/respondent No.2 at length, Mr. Ramsinghani, the learned Counsel for the applicant Mr. Dinesh Tahiliani in Criminal Application No. 289 of 2018 and the learned APP. Perused the record of investigation.

2] At the outset, it is to be noted here that, the interest of alleged victim namely Mr. Dinesh Tahiliani has been duly protected by the learned Additional Sessions Judge, Greater Mumbai by its Order dated 23.2.2018 in A.B.A. No.1957 of 2017. Even otherwise, according to me, the said applicant has no locus standi in the eyes of law to intervene in the present application. However, at the the consistent insistence, I have heard Mr. Ramsinghani, the learned Counsel for the applicant in Criminal Application No. 289 of 2018 at greater length, only with a view to justify his professional obligation.

3] At the further outset, it is to be noted here that the present crime as lodged by the first informant against the applicants do not make out any case under the provisions of Indian Penal Code. The allegations against the applicants as stated in the first information report are that, the

applicants failed to give Occupation Certificate from the Mumbai Municipal Corporation; the applicants failed to register a Cooperative Housing Society and have failed to convey the property in favour of the occupants of the said building.

4] It is to be noted here that, for non-formation of a Cooperative Housing Society, the first informant has substantial remedy under the Maharashtra Cooperative Societies Act, 1960. Likewise, for obtaining Conveyance Deed from the landlord, a remedy is available to the first informant under the Maharashtra Ownership of Flats Act, 1963. However without availing the remedies available, the first informant has lodged the present crime against the applicants for its non-compliance. After perusing the first information report and the record of investigation, prima facie it appears that, by way of arm twisting tactics the present crime is registered. It further appears that, the Investigating Agency without verifying basic facts, has indulged into lodgment of the present crime. According to me, prima facie it appears that no crime under section 406 and/or 420 of the Indian Penal Code is made out.

5] In view thereof, the applicants are entitled to be protected by pre-arrest bail.

Hence, the following Order:-

(i) In the event of arrest in CR No. 195 of 2017 registered with Matunga Police Station, Mumbai, the applicants be released on bail on their furnishing PR bond in the sum of Rs.25,000/- each with one or two separate solvent local sureties in the like amount.

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

6] Application is accordingly allowed.

7] In view of Order passed in A.B.A. No.454 of 2018, Criminal Application No.289 of 2018 for intervention does not survive and the same is accordingly disposed off.

(A.S.GADKARI, J.)