

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 567 OF 2018**

Ishwar Ananda Havale

....Applicant.

Vs.

State of Maharashtra & Anr.

....Respondents.

Mr. Vishal Patil for the Applicant.

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

Mr. Sameer Patil for Respondent No.2.

CORAM : A. S. GADKARI, J.

DATE : 8th JUNE, 2018.

P.C.:-

This is an Application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in CR No. I-128 dated 1st March, 2018 registered with Manpada Police Station, District Thane under Sections 453 of the Indian Penal Code.

2 The First Information Report is lodged on 1st March, 2018 by Mr. Kantilal Rathod stating that he purchased flat bearing No. 403 situated in A-Wing of Abhang Building, village Ajde Golavali, Dombivali (E) from M/s. Om Constructions by a registered sale deed bearing No. 607 of 2014. That, the partner of M/s. Om Constructions namely Mr. Rajaram Patil physically handed over the possession of the

said suit premises to the first informant on 2nd January, 2015, after making entire payment of consideration, as has been mentioned in the agreement. That, after receipt of possession of the said flat, the Applicant from 1st May, 2016 to 31st March, 2017 gave it on Leave and Licence basis to one Shri. Alijan Ansari and after the said period of licence was over, the vacant and peaceful possession of the said flat was handed over to the first informant by the said Mr. Ansari. The first informant, thereafter had put his own lock on the said flat.

That, on 21 December, 2017, the first informant had been to the said premises, when he saw that one unknown woman along with her two children was staying there. When the first informant asked her as to how she is residing there, she told him that the Applicant is her husband and since 20th December, 2017, she has started residing in the said premises. The First informant thereafter, contacted to the Applicant who bluntly refused to vacate the said premises. In the premise, the First Information Report has been lodged.

3 The learned counsel appearing for the Applicant submitted that, the Applicant is one of the partners of the said M/s. Om Constructions and is having dispute with his partner over monetary

transactions pertaining to the said firm. As the other partner did not settle the monetary dispute with the Applicant, the Applicant has taken possession of the suit premises, which was lying vacant and was in the possession of the said partnership firm. He further submitted that the Applicant is unaware of any agreement executed by the said partnership firm bearing No. 607 of 2014 registered with the office of the Sub-Registrar of Assurances, Kalyan-I and the possession if any, was handed over to the first informant on 2nd January 2015. He further submitted that, as the Applicant is having legal right over the said property, he has taken possession of the same. He submitted and prayed that, in view of the facts of the present case, the Applicant may be protected by pre-arrest bail.

4 After perusing the record, the following facts emerge as admitted facts.

- i) that the firm namely M/s. Om Constructions through its partner namely Mr. Rajaram Patil executed a registered sale deed bearing No. 607 of 2014 in the office of the Sub-Registrar of Assurances, Kalyan-I, in favour of the informant pertaining to the Suit flat;

- ii) that the first informant has paid the entire consideration of the said suit premises to the said M/s. Om Constructions;
- iii) that the partner of the said M/s. Om Constructions, Mr. Rajaram Patil after receipt of the entire consideration, handed over vacant possession of the suit premises to the first informant on 2nd January 2015 and a letter of possession is executed on the letterhead of the said M/s. Om Constructions, in that behalf;
- iv) that the Applicant had given the said premises on Leave and Licence basis for the period from 1st May 2016 to 31st March, 2017 to Mr. Alijan Ansari and on 31st March, 2017 the said Mr. Alijan Ansari had given vacant and peaceful possession of the said flat to the first informant and thereafter the first informant had put his own lock on the said suit premises;
- v) that on 21 December 2017, the wife of the Applicant was found in possession of the said flat

with two children and when confronted by the first informant, the Applicant admitted the taking of possession of the suit premises without any due procedure of law and bluntly refused to vacate it.

5 The aforesaid chronology of facts would make it abundantly clear that the first informant is the lawful owner of the said suit premises and was in lawful possession of the same. However, during the period from 31st March, 2017 to 21st December 2017 the Applicant broke-open the lock of the said flat owned by the first informant and has committed criminal trespass in the said property.

In view of the admission given by the Applicant about his possession in the said premises, an offence as contemplated under Section 453 of the Indian Penal Code is clearly made out.

6 The present matter was heard on 5th June, 2018 and after due deliberation with a view to have equity in the matter and to avoid further legal complications, the Applicant through his counsel had made a statement that he will hand over the vacant and peaceful possession of the suit premises to the first informant on or before 5.00 p.m. of 7th June, 2018. However, today it is informed by the learned

counsel for the Applicant to this Court that, the Applicant is not ready and willing to hand over vacant and peaceful possession of the said flat to the first informant.

7 It is necessary for the Investigating Officer to know who are the other persons who helped the Applicant in braking open the lock of the suit premises and keeping his articles therein. That, the articles which were in the premises belonging to the first informant, are to be traced out and the same is not possible without there being custodial interrogation of the Applicant.

8 After taking into consideration the material available on record, serious allegations against the Applicant and the gravity of the offence, this Court is of the considered view that, the Applicant does not deserve to be protected by pre-arrest bail.

9 The Application is accordingly rejected.

(A.S. GADKARI, J.)