

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

ANTICIPATORY BAIL APPLICATION NO. 1605 OF 2018

Chandrashekher Champalal HingarhApplicant

V/s.

The State of MaharashtraRespondent

**WITH
CRIMINAL APPLICATION NO. 1032 OF 2018**

Bijal Kumarpal ChoksiIntervener

IN THE MATTER BETWEEN

Chandrashekher Champalal HingarhApplicant

V/s.

The State of MaharashtraRespondent

Mr. Meghashyam K. Kocharekar for the applicant
Smt. Rutuja Ambekar APP for the State
Ms. Ameeta Kuttikrishnan for intervener

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 6, 2019.

P.C.

In MECR No. 05/2018 registered with D. N. Nagar Police
Station for offence punishable under Sections 406, 418, 420, 504,

Correction is carried out as per order dated 28/06/2021.

506(II) r/w 34 of the Indian Penal Code, applicant is seeking pre-arrest bail.

2 Complainant-non applicant no. 2 alleged that she was resident of 132/2015, Vishwakarma Prasad Bhavan, J. P. Road, Andheri (West). Since the owner had decided to redevelop said property, considering the condition of the building an Agreement was entered into in between Kumar Realty Private Limited and applicant. Amongst other, the clauses in the Conveyance are that if the possession is not handed over within 18 months, the complainant will be entitled for charges at the rate of 20,000/- per month w.e.f. 31/01/2019 towards displacement compensation. It is also agreed that there will be 10% rise in the said charges in each year.

3 It is the case of the complainant that the said document i.e. Agreement of of redevelopment, payment of displacement charges etc is tampered and clause “displacement charges” on page 19 was removed from the original documents as such offence in question.

4 The learned counsel for the applicant Mr. Kocharekar would

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urge that the case of the complainant of tampering with the Agreement can be falsified from the fact that the document which is relied upon is an Agreement entered into between the applicant and the complainant produced on record, page 50 of the application carries continuous paragraph numbers and each page is endorsed by the complainant and the applicant at the bottom. It is also claimed that based on the said Agreement, the amount as was tendered by the applicant towards displacement-compensation/displacement charges was already accepted.

5 The learned counsel would submit that the applicant is ready and willing to pay amount of said displacement compensation at an agreed rate as is paid to other occupants who were displaced from the same building where the applicant is residing. So as to demonstrate bonafides, the learned counsel submits that the amount at the rate of Rs. 20,000/- per months will be deposited in this Court by drawing demand draft in the name of “Registrar, Appellate Side, High Court, Bombay” towards said displacement compensation for a period upto 31/12/2019. He further assures that

till the possession is handed over to the complainant of the premises, the applicant shall continue to deposit the amount after calculating 10% increase on last payment of compensation made by depositing the same in the Court for an entire year to be commenced from 01/02/2019. He also assures that he shall continue to deposit the said amount every year in advance till the possession of developed property is handed over to complainant with Occupancy Certificate.

6 The learned counsel then would submit that the contention of the complainant that page no. 19 was removed so as to facilitate the interpretation of the Agreement in favour of the applicant, and so that the complainant can be put to loss cannot be inferred in the aforesaid background. He submits that there is no offence made out particularly for non satisfaction of the ingredients. Even if for the sake of argument, the contention of the complainant is accepted, there is no requirement of custodial interrogation as all the documents are available with the investigating agency.

7 *Per contra* the learned APP assisted by the learned counsel for the complainant would strenuously urge that the fraudulent intentions of applicant are apparent from the very conduct of not honouring the development Agreement by putting the complainant in possession within 18 months from the date of taking over of the possession. It is further claimed that the necessary ingredients *qua* section 406, 420 are very much inferred from the record and that being so, application is liable to be rejected. The documents tendered during hearing by the learned counsel for the intervener are accepted.

8 Having considered rival submission what is noticed from the document, an Agreement entered into in between applicant and the complainant which was registered with office Sub-Registrar carries the continuous paragraph numbers particularly as regards internal page nos. 15, 16, 17 & 18.

9 The case of the complainant is page 19 which speaks of displacement charges is missing from the record of the registered

document which is fraudulently removed by present applicant which was also forming part and parcel of document i.e. Agreement which is registered.

10 If the aforesaid contentions are appreciated, the Indian Evidence Act provides for sanctity to the official Act. There is presumption in favour of such official Act.

11 Apart from above, the fact remains that page containing displacement charges, even if presumed to have signed by the applicant, the same has hardly any impact over the rights of the complainant. The fact that registered document contains paging, paragraph numbers and at the end of the each page, same is countersigned by the applicant and the complainant, *prima facie* speaks of execution of the said document as it is.

12 Even if presuming that what has been felling from the complainant is correct, still the fact remains that aforesaid undertaking of payment of displacement charges given by the applicant is sufficient to infer the bonafides particularly when even

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on earlier occasion and today also he is ready and willing to part with the displacement charges as has been claimed in the disputed page 19 of the agreement.

13 The investigation papers primarily reflects that copy of the contract entered into between applicant and complainant and the disputed page 19 of the said Agreement is within his custody. Since the offence is based on the documents, in my opinion, custodial interrogation is not warranted apart from the fact there is a serious dispute as to whether it is a part and parcel of the original document entered into between complainant and the applicant.

14 Having accepted the statement made by the learned counsel for the applicant in the form of undertaking and in view of the observations made, applicant, in my opinion is entitled for the relief as claimed.

(A) In the event of arrest in MECR No. 05/2018 registered with D. N. Nagar Police Station, applicant be released on bail on furnishing P.R. bond in the sum of Rs. 50,000/- with one or more sureties in the like amount.

(B) Applicant to attend Investigating Officer as and when directed by him.

(C) Applicant shall not influence witnesses or tamper with evidence.

(D) Applicant shall honour the undertaking by depositing the amount due and payable within two weeks from today, drawing demand draft in favour of "Registrar, Appellate Side, High Court, Bombay" by 28/02/2019.

(E) If the possession is not handed over by December of each succeeding year, it shall be the duty of the applicant to deposit the amount of displacement charges as observed herein above. He shall continue to deposit the same by 31st of January of succeeding year for the entire year with 10% rise on last payment.

(F) If the applicant fails to deposit the amount as undertaken, the protection ordered by this Court shall automatically cease to operate and the Investigating Officer will be at liberty to take applicant into custody.

15 Application stands disposed of.

16 Intervention application also stands disposed of.

[NITIN W. SAMBRE, J.]