

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

**ANTICIPATORY BAIL APPLICATION NO. 1335 OF 2016
WITH
CRIMINAL APPLICATION NO. 803 OF 2017**

Bhavik Bhupendra Shah & Anr. ... Applicants

Versus

The State of Maharashtra & Anr. ... Respondents

Mr. Manoj Mohite I/by Amey Deshpande for Applicants.

Mr. A. Y. Sakhare, Senior Counsel I/by Harshal Palwe for Intervener.

Ms. S. S. Kaushik, APP for Respondent No.1 – State.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 28, 2019.

P.C. :

. Both the Applicants are seeking pre-arrest bail in Crime No. I-62 of 2016 registered with Sarkarwada Police Station, Nashik for an offence punishable under Sections 420, 467, 468, 471, 120-B, 406, 417, 192, 193, 199, 200 read with Section 34 of the Indian Penal Code.

2. The prosecution case is, the land located in residential zone bearing Survey No. 905/(2/1+2)/1+2/2) admeasuring 5 Hector 58 Ares was mutated in 7/12 extract in the name of Nakshatra Infrastructure

Private Limited through its Director Vinod Premchand Surana. Out of the aforesaid, land to the extent of 2 Hector located on west side adjoining Mumbai – Agra road i.e. 20,000 square meters was agreed to be purchased by the Applicant No. 1 – Bhavik Bhupendra Shah and Applicant No.2 – Priyank Shirish Shah for consideration of Rs. 35 Crores & 55 Lac.

3. It is claimed that Santosh Shantilal Muthian has intimated the complainant Govindrao Yadavrao Sabale that the deal of aforesaid land will be looked after by the Applicants. Accordingly, the complainant paid the amount of consideration as follows.

Sr.No.	Description of Cheque	Cheque No. and Date	Amount
1]	Bhavik Buildcon	970801, dt. 24/12/2010	50,00,000/-
2]	Bhavik Developers	970802, dt. 24/12/2010	50,00,000/-
3]	Bhairav Shirish Shah	80909, dt. 31/1/2011	60,00,000/-
4]	Hitiksha Shirish Shah	80909, dt. 31/1/2011	60,00,000/-
5]	Bhavik Bhupendra Shah	80911, dt. 31/1/2011	60,00,000/-
6]	Hemal Pinkesh Shah	80912, dt.31/1/2011	60,00,000/-
7]	Pinkesh Bhupendra Shah	80913, dt. 31/1/2011	60,00,000/-
8]	Saurabh Ajit Shah	80914, dt. 31/1/2011	60,00,000/-
9]	Sunita Ajit Shah	80915, dt. 31/1/2011	60,00,000/-
10]	Priyank Shirish Shah	80916, dt. 31.1.2011	60,00,000/-
11]	Shardaben Shantilal Shah	80917, dt. 31/1/2011	60,00,000/-
12]	Sunita Ajit Shah	80924, dt. 2/2/2011	30,00,000/-

13]	Priyank Shirish Shah	80925, dt. 2/2/2011	30,00,000/-
14]	Shardaben Shantilal Shah	98876, dt. 2/2/2011	30,00,000/-
15]	Bhairav Shirish Shah	80921, dt. 2/2/2011	30,00,000/-
16]	Hitiksha Shirish Shah	80922, dt. 2/2/2011	30,00,000/-
17]	Pinkesh Bhupendra Shah	80923, dt. 2/2/2011	30,00,000/-
18]	Bhavik Bhupendra Shah	80918, dt. 2/2/2011	40,00,000/-
19]	Hemal Pinkesh Shah	80919, dt. 2/2/2011	40,00,000/-
20]	Saurabh Ajit Shah	80920, dt. 2/2/2011	40,00,000/-
21]	SantoshShantilal Muthian	D. D. No. 507856, dt. 15/2/2011	45,00,000/-
22]	M/s Nakshatra Infrastructure Private Ltd.	D. D. No. 799451, dt. 15/2/2011	45,00,000/-

The Complainant has also paid an amount of Rs. 4 Crores & 54 Lacs in cash. As such, the complainant has paid total consideration of Rs. 14 Crores & 94 Lacs till 10th March 2011 to the Applicants and their nominees.

4. According to the Complainant, an Agreement dated 17th February 2011 entered into between the Applicants and the earlier owners namely, Santosh Shantilal Muthian and Vinod Premchand Surana reflects the aforesaid payments. An Agreement was entered into in favour of the Complainant by the Applicants. It is claimed that in addition to the

aforesaid payment an amount of Rs.18 Crores & 49 Lacs was paid by the Complainant, however, according to him, the property was not transferred in his name. As such, the offence in question.

5. Mr. Mohite, the learned Counsel for Applicants would urge that perusal of an Agreement entered into between the present Applicants and the earlier owners Mr. Santosh Muthian and Nakshatra Infrastructure Pvt. Ltd. through Vinod Surana in categorical terms provides for transfer of 2 Hector i.e. 20,000 Square meters i.e. 4.91 acres including service roads in favour of the Applicants. According to him, the said Agreement dated 17th February 2011 was entered into between the Applicants and the erstwhile owners and thereafter the Applicants entered into an Agreement of Sale dated 10th March 2011 in favour of the Complainant for agreed consideration.

6. According to the learned Counsel, what was agreed to transfer in favour of the complainant is reflected in the Agreement dated 10th March 2011 and the Agreement of Purchase between the Applicants and the erstwhile owners was also referred to in the said Agreement. As such, according to him, it was a contingent contract which was subject to

outcome of the earlier Agreement between the Applicants and the owners namely, Santosh Muthian and Nakshatra Infrastructure Pvt. Ltd.

7. The learned Counsel then would urge that it was never the intention of the Applicants to dupe the complainant, however, since the complainant has failed to honour the commitment of payment as was agreed to, as a consequences thereof the Applicants were not in a position to make good the payments to the erstwhile owners resulting into the alleged breach of contract.

8. The learned Counsel then would urge that the Applicants have already initiated a suit for specific performance against Santosh Muthian and Nakshatra Infrastructure Pvt. Ltd. for specific performance of contract being Special Civil Suit No. 456 of 2012 pending on the file of Civil Judge Senior Division, Nashik. He would then urge that the complainant Govindrao has also initiated Special Civil Suit No. 308 of 2014 against the present Applicants and erstwhile owners i.e. Santosh Muthian and Nakshatra Infrastructure Pvt. Ltd. for specific performance of contract. According to him, the cumulative effect of the aforesaid conduct

of the parties would demonstrate that there exists civil dispute. That being so, the custodial interrogation of the Applicants is not warranted.

9. *Per contra*, the learned APP who is assisted by the learned Senior Counsel Mr. Sakhare for the Complainant would urge that the Applicant having accepted an amount of Rs.18.00 Crores, and having not conveyed the property has prima facie committed an offence punishable under Sections 406, 420 of the Indian Penal Code read with other allied Sections. According to the learned APP conduct of the Applicants appears to be dishonest since beginning, as the Applicants have conducted themselves in the transaction in question by taking recourse to unreasonable and unjust enrichment in their favour based on the amount invested by the Complainant. It is claimed that the custodial interrogation of the Applicants is necessary. As such, rejection of the Application is sought.

10. Considered rival submissions.

11. The Agreement entered into between the Complainant and

the Applicants and the erstwhile owners are not appears to be disputed fact.

12. The difference arose between the parties as is apparent from the fact of non-payment of the balance consideration. The Applicants alleged that since the Complainant failed to pay an amount of Rs.10.00 Crores as was agreed in the contract, the Applicants were unable to process the further payments in favour of the original owner they have agreed to purchase the land from. It is this conduct of the Complainant which has broken the chain in the transaction in question. Though the parties are trying to blame each other, viz – Applicants to Complainant and Complainant to Applicants, based on respective agreements in their favour, the parties are litigating before the competent civil court in Special Civil Suit No. 308 of 2014 and 456 of 2012 pending before the Civil Judge Senior Division, Nashik. The basis for both these suits appear to be the Agreement of Sale/Purchase entered into and not honouring the commitment therein. As such, the aforesaid conduct of the parties demonstrates that even if the part of consideration is paid by the complainant to Applicant who in turn has paid to original owner, the

remedy lies before the competent Civil Court before whom they are already litigating.

13. Whether the time was essence of contract and whether the consideration was paid in time cannot be an issue which can be gone into in the present proceedings. That being so, in my opinion, the custodial interrogation of the Applicants is not warranted.

14. There is one more reason so as to grant protection in favour of the Applicants. The title in favour of the present Applicants was not absolute and same was based on an Agreement with the owners namely, Santosh Muthian and Nakshatra Infrastructure Pvt. Ltd. which fact was well within the knowledge of the Complainant.

15. That being so, ad-interim protection granted earlier in favour of the Applicants is confirmed in addition –

(A) In the event of arrest in Crime No. I-62 of 2016 registered with Sarkarwada Police Station, Nashik for an offence punishable under Sections 420, 467, 468, 471, 120-B, 406, 417, 192, 193, 199, 200 read with Section 34 of the Indian Penal Code, both the Applicants

be released on executing PR Bond of Rs.25,000/- with one or more sureties each in the like amount.

- (B) Both the Applicants shall attend the Investigating Officer on 4th, 8th, 15th and 18th February 2019 between 10.00 a.m. to 12.00 noon and thereafter as and when directed by the Investigating Officer.
- (C) Both the Applicants shall neither tamper the evidence of prosecution nor influence the prosecution witnesses.

16. Anticipatory Bail Application and Criminal Application No. 803 of 2017 stand disposed of accordingly.

(NITIN W. SAMBRE, J.)