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

**ANTICIPATORY BAIL APPLICATION NO.2052 OF 2018
WITH
APPP NO.1291 OF 2018**

Ponmudi Munnaswamy Kaundar
@ Raju Punmadi Kaundar & Anr.

..Applicants

Vs

The State of Maharashtra & Anr.

..Respondents

Mr. Niranjan Mundargi for the Applicants.
Ms. J.S. Lohokare, APP for the State.
Mr. S.V. Marwadi I/b Vishal Sexena for Intervener.

**CORAM : A.S.GADKARI, J.
DATE : 2nd April 2019.**

P.C.:

1] The applicants are apprehending arrest in CR No. 380 of 2017 dated 26.10.2017 registered with Amboli Police Station, Mumbai under Sections 406, 420, 506(2) read with 34 of the Indian Penal Code.

2] Heard the learned counsel for the applicants, the learned counsel for the Intervener at greater length and the learned APP for the State. Perused the record of investigation.

3] The first information report is lodged by Shri Srinivasan Kaundar. The prosecution case in brief is that, in the year 2007 the first

informant was residing at Anna Nagar Slum, situated at Andheri (West), Mumbai. In the year 2007 a scheme for slum rehabilitation was proposed by the residents of the said Slum and the first informant was allotted a flat bearing No.313 therein after conducting a draw. It is alleged that, after the said flat was allotted to the first informant, the applicants deceitfully took keys of the said flat from the informant, assaulted him and drove him away from the said place. On 15.5.2010, the first informant was informed by the person of the Developer that, his hut would be demolished as he has been allotted Flat No.313. That on 21.12.2016 the applicant through his person of confidence called the informant to meet him, otherwise he will have to face serious consequences. It is the specific case of the prosecution that, the applicant by giving promise of giving flat to the informant and after allotting a flat bearing No.513 in the said slum rehabilitation scheme, thereafter took keys of the said flat from the first informant and subsequently transferred it in favour of third person.

4] The learned counsel for the first informant submitted that, the first informant is an illiterate person and due to threats administered by the applicant, he could not approach the police in last about about 10 years. He submitted that, the agreement of sale dated 26.11.1994 executed between

the first informant and Mrs. Laxmi R. Achari is a bogus document and the same is not signed by the informant. He submitted that, the record of the society though depicts that the said flat No.313 is standing in the name of informant as on 31.3.2018, the Society has not maintained record properly. That the said Co-operative Society is being governed by the applicants herein and they did not conduct election of it in last many years. He submitted that, there are about 20 persons whose flats have been transferred in the name of third person by the applicants by using their position in the Society and therefore the custody of the applicants is necessary.

The learned APP also supported the arguments advanced by Shri Marwadi, the learned Counsel for the applicants and submitted that, the present application may be rejected.

5] Perusal of the record would indicate that, by unregistered Agreement dated 26.11.1994 the first informant had agreed to transfer his hut No.103 lying and situated at Anna Nagar Slums, New Link Road, Andheri, Mumbai 400058 in favour of Mrs. Laxmi Achary for valuable consideration. It appears that, the informant has in fact accepted the said consideration of Rs.50,000/- by executing receipt which was witnessed by

two persons. The record further shows that, said Mrs. Laxmi Achari subsequently transferred her right, title and interest in the said premises in favour of Govindan R. Kavander and the said Govindan Kavander in turn transferred the said premises in favour of Mr. Suresh Pathak. The Investigating Officer has recorded statement of said Suresh Pathak who is presently occupying the said premises. The said Suresh Pathak has narrated the succession of title pertaining to the said premises. The record indicates that, the applicant has been mentioned as the owner of Flat No.313 in the register of the Society. It is to be noted here that, on 15.5.2010 the hut of the informant was demolished by the Competent Authority and despite the said fact and subsequent thereto the informant did not make any complaint before the Police or any other Authority. It appears that the conduct of the first informant does not appear to be of a man of common prudence. It further appears that, the first information report is silent about the date and month in which the said act of taking key by the applicants had taken place. The investigation of the present crime is solely based on the documents which have already been seized by the police.

6] After taking into consideration the facts mentioned

hereinabove, this Court is of the view that, the custodial interrogation of the applicant for further investigation in the presents crime is not necessary and the applicant can be protected by pre-arrest bail.

Hence, the following Order:-

i] In the event of arrest in CR No.380 of 2017 registered with Amboli Police Station, Mumbai, the applicants shall be released on bail on their furnishing PR bond in the sum of Rs.25,000/- each with one or two solvent local sureties.

ii] Applicants shall attend the Investigating Officer of the said Police Station on 9th, 10th and 11th of April 2019 between 10.00 a.m and 12.00 noon and to co-operate in the process of investigation.

iii] Applicants shall not tamper with the evidence and/or influence the prosecution witnesses.

7] Application is disposed off in the aforesaid terms.

8] In view of Order passed in A.B.A. No.2052 of 2018, Criminal Application (APPP) No.1291 of 2018 does not survive and is according disposed off.

(A.S.GADKARI, J.)