

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

ANTICIPATORY BAIL APPLICATION NO. 1951 OF 2018

Rajesh Mangilal Sonkar	... Applicant
Vs.	
State of Maharashtra	... Respondent

CRIMINAL APPLICATION NO. 1269 OF 2018

IN

ANTICIPATORY BAIL APPLICATION NO. 1951 OF 2018

Vipul R. Vira	... Intervenor
<i>In the matter between</i>	

Rajesh Mangilal Sonkar	... Applicant
Vs.	
State of Maharashtra	... Respondent

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Ms. Sudha Dwivedi for the applicant.
Mr. Rakesh Agrawal for intervenor.
Mr. A.R. Kapadnis, APP for the Respondent-State.
Mr. Arun Padhavi, API is present.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 11th February, 2019.**

P.C.

1. This is an application for anticipatory bail. Applicant is apprehending arrest in connection with C.R. No. 104 of 2018 registered with Koparkhairane for the offence punishable under Sections 323, 504, 452 of Indian Penal Code.

2. The prosecution case is that the complainant purchased four flats from co-accused i.e proprietor of Sonal Developers in the year

2006. On 18th November, 2006 allotment was made in the name of informant and he had paid consideration of Rs.37,30,000 against the allotment and since then the informant has been paying monthly tax, electricity bills and society maintenance of the said flats which are bearing No. 54, 61, 64 and 31 situated in the same building premises. Premises which is subject matter of the present proceeding is flat No. 61. It is alleged that applicant and 22 to 25 persons had assaulted guards, committed trespass and thrown the articles from the flat. First Information Report was lodged with the police and offences were registered as stated above on 24th April, 2018. Applicant preferred application for anticipatory bail before the sessions Court which was rejected on 5th June, 2018.

3. Learned counsel for the applicant submitted that applicant has been falsely implicated in this case. The custodial interrogation of the applicant is not necessary. Except Section 452 of Indian Penal Code all the offences are bailable in nature. Applicant is a bonafide purchaser of the said property from M/s Sonal Developers. The agreement between developer and the applicant was executed on 8th June, 2017 and the same was registered and requisite stamp duty was paid on the same day.

The applicant has received letter of possession from the developers. The total consideration for the flat was Rs.60,00,000/- and out of which Rs.10,00,000/- has been paid by the applicant and for the outstanding amount of Rs.50,00,000/-, the applicant had applied for a loan on 20th June, 2017 with Co-operative Credit Society. Application was accepted by the Society, however, the loan was not cleared for want of no objection from society.

4. The informant has been trying to evict the applicant from the premises. Society had written letter to the police stating that several persons are trying to occupy the said premises. It is submitted that applicant had lodged a FIR on 9th May, 2018 stating that applicant and his brother were assaulted by some persons who trying to take possession of the premises. It is submitted that dispute is of civil nature and custodial interrogation of the applicant is not necessary.

5. Learned APP submitted that there is sufficient evidence to show the involvement of the applicant in the crime. The applicant had executed an agreement with the developer. It is submitted that the property was already sold to the informant and allotment letter was also given to the informant. It is submitted that during

the course of investigation, the statement of witnesses were recorded which shows the complicity of the applicant in the crime. Learned counsel for the intervenor also opposed the application for anticipatory bail. Reliance is placed on several documents to claim that the informant has right in property and he was in possession of the same.

6. On perusal of the document on record it is apparent that the applicant claims to have purchased the said flat vide agreement dated 8th June, 2017. Consideration agreed to be paid was Rs.60,00,000/- and on payment of part consideration of Rs.10,00,000/- the agreement was registered hurriedly. It is contended by the applicant that balance consideration was to be paid after obtaining loan from the Credit Society which was not disbursed on account of not providing no objection certificate. However, the informant has alleged that the premises was in his possession and that on the day of incident the accused had committed trespass, assaulted the security guards of the complainant. During the course of investigation, statement of witnesses were recorded. The witnesses have stated that electric supply of DVR was disconnected from 17th April, 2018 as electric supply was deliberately stopped and hence CCTV footage was not

available. The statement of witnesses also indicate that on 23rd April, 2018, the applicant and 15 to 20 persons had forcibly entered in the Flat No. 61 and assaulted the guards of the complainant by sticks and fist blows. They threw the articles from flat. The witnesses gave call to police on number 100. The statements of witnesses corroborated this above version. Applicant is the resident of the same building. The statement of the witnesses corroborated the version of the complainant. Considering the investigation conducted by the police, no case for grant of anticipatory bail is made out. Hence, I pass the following order.

ORDER

- i. Anticipatory Bail Application No. 1951 of 2018 is rejected.
- ii. Criminal Application No. 1269 of 2018 is allowed.
- iii. At this stage, learned advocate for the applicant made a request that the applicant would like to challenge the order before higher forum and hence interim protection be extended for a period of four weeks. Considering the fact that interim protection was granted on 24th September, 2018 and the same was extended from time to time, the interim order is further extended for a period of four weeks.

iv. Anticipatory Bail Application No. 1951 of 2018 and Criminal Application No. 1269 of 2018 stand disposed off.

(PRAKASH D. NAIK, J.)