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

ANTICIPATORY BAIL APPLICATION NO. 2708 OF 2018

1. Vithal Hiru Mhatre
2. Madhukar Vithal Mhatre
3. Mayur Madhukar Mhatre

.....Applicants

V/s.

The State of Maharashtra

.....Respondent

**WITH
CRIMINAL APPLICATION NO. 7 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO. 2708 OF 2018**

Smt. Sonya Mehraj Merchant

....Intervener

IN THE MATTER BETWEEN

Vithal Hiru Mhatre and others

....Applicants

V/s.

The State of Maharashtra

.....Respondent

Mr. Akhilesh Dubey, Mr. Prasad Konde Deshmukh, Mr. Siddhesh Rajput i/b Law Counsellors advocate for the applicant
Ms. S. S. Kaushik APP for the State
Mr. Acharya Manthira M. A. for intervener

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 14, 2019.

P.C.

Heard the learned counsel for the applicant, the learned APP and the learned counsel for the intervener.

2 In Crime No. 599 of 2018 registered with Panvel Police Station for offence punishable under Sections 143, 144, 147, 120-B, 181, 191, 146, 199, 427, 447, 341, 378, 379, 405, 415, 420, 426, 441, 445, 453, 504 and 506(2) of the Indian Penal Code, applicants are seeking pre-arrest bail.

3 Applicants filed Regular Civil Suit No. 387 of 2018 for possession of the tenanted property against one Lokhandwala Nuraddin of which complainant claim to be in possession as a Sub-Lessee. Applicants' Suit came to be decreed vide Judgment and Order dated 27/04/2018. It is against the aforesaid Decree, complainant filed Special Civil Suit No. 401 of 2018 with a prayer for declaration that the Decree is not binding on the complainant. The said Special Civil Suit No. 401 of 2018 came to be rejected vide order

dated 30/08/2018 passed by Civil Judge Senior Division, Panvel pursuant to the provisions of Order VII Rule 11 of the Code of Civil Procedure. Complainant, feeling aggrieved preferred Civil Appeal No. 109 of 2018 which is pending on the file of Principal District Judge, Raigad in which on 24/09/2018, an order of Status-quo came to be passed.

4 In the aforesaid background, complainant preferred a complaint case alleging offence under sections 143, 144, 147, 149, 120 (B), 181, 191, 146, 199, 427, 447, 341, 378, 379, 405, 415, 420, 426, 447, 441, 445, 453, 504 and 506 (2) of the Indian Penal Code as according to complainant, belongings on the Suit property are removed by the applicants-accused under the garb of aforesaid Decree for possession, thereby causing substantial damage/loss etc. The Judicial Magistrate First Class, Panvel vide order dated 31/10/2018 directed the City Police Station Panvel to file F.I.R. before the concerned Court. In the aforesaid background, since the crime no. 599 of 2018 is registered against the applicant for offence punishable under sections 143, 144, 147, 149, 120 (B), 181, 191,

146, 199, 427, 447, 341, 378, 379, 405, 415, 420, 426, 441, 445, 453, 504 and 506 (2) of the Indian Penal Code, applicants have approached this Court seeking pre-arrest bail.

5 The learned counsel for the applicants submits that there is no privity of contract between the applicants and complainant and all that applicants have done is received possession of their property by virtue of a Decree in question which is passed by court of competent jurisdiction as could be inferred from the Judgment and Decree dated 27/04/2018 passed in R.C.S. No. 387 of 2015. According to him, the Suit filed by the complainant and one more person for declaration that the Decree is not binding on them was already rejected against which Civil Appeal No. 109 of 2018 is pending, in which there is order of Status-quo passed on 24/09/2018. According to him, since the entire issue is arising out of civil dispute between the parties, by giving colour of criminal offence, arms of the applicants are sought to be twisted by the complainant. According to him, the outcome of the Civil Suit will be binding on the parties and it is always open for the complainant to claim

damages/compensation, if any, for any wrongful or illegal act carried out by the applicants under the garb of a Decree in question.

6 *Per contra* the learned APP who is assisted by the learned counsel for the complainant would urge that custodial interrogation of the applicants is necessary as the belongings of the complainant are removed by the applicants, whereabouts of which needs to be find out from the applicants. It is also claimed that the act of the applicants is *prima facie* contrary to the Judgment in Civil Court as the Decree ought not to have been executed against the complainant. As such, it is sought that application for grant of pre-arrest bail be rejected.

7 Considered rival submissions.

8 Perusal of the complaint case preferred under section 156 (3) of Code of Criminal Procedure, 1973 does not reflect any bodily offence.

9 There is sufficient material on record to *prima facie* infer that applicants came in possession of the property by virtue of Decree passed in their favour in the above referred Suit being R.C.S. No. 387 of 2015.

10 Apart from above, upon perusal of the complaint, what would be noticed is financial loss, if any, caused to the complainant including that of in the nature of damages or compensation can be looked into by the Court of competent jurisdiction including that of Court which is taking up the Suit of the complainant for declaration that the Decree in question is not binding on them.

11 Keeping open the above in law which is available to the complainant adjudicating the issue as regards claiming restoration of the possession alongwith their belongings, damages/compensation, in my opinion, in the aforesaid factual background of pendency of civil proceedings before the competent Civil Court, custodial interrogation of the applicants is not warranted. As such, case for pre-arrest bail is made out. Hence, following order:

ORDER

- (I) Application is allowed.
- (II) In the event of arrest of applicants in Crime No. 599 of 2018 registered with Panvel Police Station, they be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- each with one or two sureties in the like amount.
- (III) Applicants shall co-operate with the investigation.
- (IV) Applicants shall not influence the witnesses or tamper with evidence.

12 Application stands disposed of. Intervention application also stands disposed of.

[NITIN W. SAMBRE, J.]