

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.442 OF 2020

1. Ramdas Tanaji Kohakade,	
2. Sharad Ramdas Kohakade,	
3. Jayashri Sharad Kokahade	Applicants
versus	
The State of Maharashtra	Respondent

WITH
INTERIM APPLICATION NO.1 OF 2020

Sanjay Hariprasad Kanoji	Intervenor
--------------------------	------------

In the matter between :

1. Ramdas Tanaji Kohakade,	
2. Sharad Ramdas Kohakade,	
3. Jayashri Sharad Kokahade	Applicants
versus	
The State of Maharashtra	Respondent

AND
INTERIM APPLICATION NO.2 OF 2020

Rucha Kirti Rathod	Intervenor
--------------------	------------

In the matter between :

1. Ramdas Tanaji Kohakade,	
2. Sharad Ramdas Kohakade,	
3. Jayashri Sharad Kokahade	Applicants
versus	
The State of Maharashtra	Respondent

Mr.Ganesh Gole i/by Ritesh Ratnam for applicants.

Mr.S.S.Pednekar, APP, for State.

Mr.Yuvraj D. Patil for Intervenor in IA No.2/2020.

Mr.M.D.Pardeshi, APIm, Upnagar Police Station, Nashik City, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 27th February 2020

PC :

1. The applicants are seeking anticipatory bail in connection with CR No.I-57 of 2020 registered at Upnagar Police Station, District Nashik for offences under Sections 420, 406, 468, 504 and 506 r/w 34 of Indian Penal Code.

2. The applicant no.2 is the son of applicant no.1 and applicant no.3 is wife of applicant no.2. The applicants are owners of plot of land bearing gat/survey no.27/3/A + 27/3/B situated at Deolali, District Nashik. The applicants being the owners had executed Memorandum of Understanding with Akruti Constructions for developing the said property. The developer had executed agreements for sale of flats with other persons including the complainant. The applicants being the owners of the property, were consenting party in the said agreement. Although 80% construction was carried out, there is no permission to carry out such construction.

3. Learned counsel for applicants submitted that the amount towards sale of flats was parted to the developer. The applicants were only concerned with the memorandum of understanding executed with the developer for carrying out construction on the plot of land owned by them. They are not the beneficiaries of the amount paid by purchasers of flats and the entire amount was received by the developer. It is submitted that the applicants had applied for permission to carry out the construction and that application is pending before the concerned authority.

4. Learned APP submitted that permission for construction has been refused by authorities on 21st January 2016. The agreements of sale of the flats were executed thereafter. It is submitted that in spite of rejection of permission, the applicants were consenting parties in the agreements executed with complainant and other persons towards sale of flats. Learned counsel for intervenor adopted arguments of learned APP. It is submitted that the applicants were aware that permission was refused for construction and in spite of that construction was carried out in connivance with the developer. The applicants are also beneficiaries of the said transactions.

5. I have perused the documents on record. Learned APP has pointed out that permission for construction was refused on 21st January 2016. The applicants are indeed consenting party in the agreement for sale of the flats executed between the developer and the purchasers of flats. In clause-17 of the said agreement for sale, it is stated that the consent for this agreement has been given by the original owners Mr.Sharad Kohakade and others and he is the head of family and other members have delegated powers for giving such consent. It is further noted that applicant no.1 is aged about 74 years and is father of applicant no.2 and applicant no.3 is wife of applicant no.2. Applicant nos.1 and 3 may not be subjected to custodial interrogation. They can be directed to co-operate with investigation. However, no relief can be granted u/s 438 of Cr.PC to applicant no.2.

6. Hence, I pass following order :

ORDER

- (i) Criminal Anticipatory Bail Application No.442 of 2020 qua applicant no.1 Ramdas Tanaji Kohakade and applicant no.3 Jayashri Sharad Kohakade is allowed and disposed of;
- (ii) In the event of arrest of applicant no.1 Ramdas Tanaji Kohakade and applicant no.3 Jayashri Sharad Kohakade in connection with CR No.I-57 of 2020 registered with Upnagar Police Station, District Nashik, they be released on bail on furnishing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) The applicant no.1 Ramdas Tanaji Kohakade and applicant no.3 Jayashri Sharad Kohakade shall report the Investigating Officer on 6th and 9th March 2020 between 11 am and 1 pm;
- (iv) Criminal Anticipatory Bail Application No.442 of 2020 qua applicant no.2 Sharad Ramdas Kohakade is rejected.
- (v) Interim Application Nos.1 of 2020 and 2 of 2020 are allowed and disposed of.

(PRAKASH D. NAIK, J.)

MST