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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 113 OF 2021

KRISHNA GANPAT GAIKWAD ANRAPPLICANTS

V/s.

THE STATE OF MAHARASHTRARESPONDENT

WITH

INTERIM APPLICATION NO. 202 OF 2021

IN

ANTICIPATORY BAIL APPLICATION NO. 113 OF 2021

SANJAY SATTU KAMBLEAPPLICANT

IN THE MATTER BEWTEEN

KRISHNA GANPAT GAIKWAD ANRAPPLICANTS

V/s.

THE STATE OF MAHARASHTRARESPONDENT

Mr. Vishal Kanade i/b Mr. Yogesh Bamne advocate for the applicants

Mr. A. R. Kapadnis APP for the State

Mr. Ashwinikumar Pathak for the intervenor

CORAM : NITIN W. SAMBRE, J.

DATE: 7th OCTOBER, 2021.

P.C.:

1] Applicant is seeking pre-arrest bail in C.R. No. 266/2019 registered with Wadala Police Station for offence punishable under Sections 420, 465, 467, 468, 471 r/w 34 of the Indian Penal Code.

2] The case of the prosecution against the applicants is, in 2003, complainant Sanjay, owner of the property referred to in the F.I.R. parted possession to his sister Sunita and Sunita in turn permitted one of the applicant namely Krishna to occupy the room with her. It is further claimed that complainant thereafter moved to Kolhapur so as to take care of his aged father in 2008 and after he returned back in 2012, he discovered that the structure was demolished as S.R.A. scheme was to be implemented. He having further inquired with the developer, found that applicants are claiming the right over the property by virtue of their possession/ownership, that being so, offence in question.

3] Learned APP assisted by Mr. Pathak, learned counsel for the complainant would urge that applicants have taken undue advantage of absence of complainant from Mumbai. The fact that complainant

has taken loan by mortgaging the aforesaid property in 2006 amply establishes the possession of the complainant over the suit property. It is claimed that story developed by applicants such as complaint to the police station about loss of the documents etc are based on forged and fabricated documents. That being so, prayer of the applicants is liable to be rejected.

4] Considered submissions.

5] Complainant claimed to have title to the property in question, however, applicants' plea is based on their settled possession over the property. Said fact about possession of the complainant is mentioned in the F.I.R. by the complainant himself. He has come out with a case that he parted possession of the property to his sister Sunita who in turn started sharing the same with co-accused Krishna.

6] It appears that Sunita alleged to have been received consideration as is claimed by the complainant and parted her possession over the suit property in favour of accused Krishna. It is

in this way, applicants appear to be in settled possession of the said property. These facts are not in dispute, as same are derived from the contents of the F.I.R. and supported by counsel for the applicants.

7] The case of the applicants is based on settled possession and not on the title to the suit property. Said statement made by the counsel for the applicants is accepted as an undertaking to this Court as it is specifically submitted by counsel for the applicants that they are not claiming any title to the said property.

8] In the aforesaid background, once the complainant himself has come out with a case of settled possession of the applicants over the suit property, in my opinion, case for grant of protection is made out.

9] Ad-interim protection ordered on 15/01/2021 stands confirmed. Hence, following order:

(i) In the event of arrest of the applicants in C.R. No. 266/2019 registered with Wadala Police Station for

offence punishable under Sections 420, 465, 467, 468, 471 r/w 34 of the Indian Penal Code, they be released on bail on furnishing P.R. bond in the sum of Rs. 15,000/- each with one or more sureties in the like amount.

(ii) Applicants to attend Investigating Officer on 20/10/2021, 22/10/2021 and 25/10/2021 and thereafter as and when directed.

9] Application alongwith intervention application stand disposed of.

[NITIN W. SAMBRE, J.]