

Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.541 OF 2018**

Sunil Purapullayil Thomas and anr. .. Applicants

vs.

The State of Maharashtra and anr. .. Respondents

Mr. Anil Dubey I/b. V.M. Dubey for the Applicants.

Mr. N.B. Patil, APP for the Respondent-State.

None for Respondent No.2.

Dipali Kulkarni, Assistant Police Inspector is present.

CORAM : M.S.KARNIK, J.

DATE : JULY 12, 2021

(THROUGH V.C.)

P.C.

Heard learned counsel for the Applicants and learned APP for the Respondent-State.

2. The Applicants seek pre-arrest bail in connection with M.E.C.R. No.1 of 2018 registered with the Navghar Police Station, Mulund (East), Mumbai for the alleged offences punishable under Section 420, 465, 467, 471, 504 read with 34, 120B of the Indian Penal Code. Private complaint was filed on 12.06.2017 by the complainant before the Court of learned Metropolitan Magistrate at Mulund. Vide order dated 03.01.2018, the learned Magistrate directed investigation under Section 156(3) of the Code of Criminal Procedure ('Cr.P.C.' for short). In pursuance of the said order

M.E.C.R. No.1 of 2018 was registered. It is alleged that the accused were carrying out development of work under SRA Scheme on Plot No.CTS 406 (Part), 407(Part), 408 (Part). Accused No.1 is builder/developer and accused No.2 is Chief Promoter. They have failed to develop the property. The complainant claims possession of room premises in the property under development. There is mismanagement and malpractice by accused. Some of the persons named in Annexure II are not eligible members. False documents were prepared in the name of persons who had no claim in the scheme.

3. It is the contention of learned counsel for the Applicants that a private complaint lodged by the complainant as against the Applicants was not maintainable and if the complainant had any grievance he should have approached the High Power Committee. The allegation is that though the owner of the hutment had died in 1995, the agreement was executed by the developer in the name of the dead person in the year 2006. Learned counsel contends that the occupier of the premises viz. the complainant, instead of approaching the High Power Committee, filed a complaint before the Magistrate under Section 156(3) of the Cr.P.C. The complaint is false. The applicants has submitted documents about eligibility. After scrutiny, Annexure II was prepared. The complainant has transferred his right to another person vide agreement and other documents and the said person has made application to Society. The complainant is claiming premises free of cost and since

demand is not fulfilled, complaint is filed. The Applicants have cooperated with investigation. They have attended police station. Matter relates to documents. Their custodial interrogation is not necessary.

4. Learned counsel for the Applicants relied upon the decision of the Division Bench of this Court in Criminal Writ Petition No.924 of 2016 in the case of **Sayed Anwar Ahmed and anr. Vs. The State of Maharashtra and anr.**

5. Learned counsel for the Petitioners submits that he has already filed a Petition for quashing of the M.E.C.R. complaint No.1 of 2018 and which is pending herein before this Court.

6. Learned APP appearing on behalf of the Respondent-State opposed the Application. It is contended by him that there is a serious fraud committed by the Applicants. Documents were fabricated, which needs to be thoroughly investigated and considering the nature of the allegations, the custodial interrogation of the Applicants is necessitated.

7. I find that the complainant had appeared on the previous occasion in this matter through his counsel. There is no appearance on his behalf since the last couple of dates. Learned counsel for the Applicants on instructions informed this Court that the disputes which the complainant had with the developer has since been

resolved and the complainant is rehabilitated in the respective tenement to his satisfaction. In this view of the matter and considering that the Applicants were granted interim protection by this Court as far back on 03.04.2018, in my opinion, there should be no difficulty in granting pre-arrest bail to the Applicants. It is obvious that the complainant now does not have any grievance against the Applicants. During pendency of application before Sessions Court, the Applicants were granted interim protection. Apparently Applicants had appeared before Investigating Officer. While granting interim relief vide order dated 03.04.2018, the Applicants were directed to report Investigating Officer on 10th, 11th, 12th April, 2018. It is not disputed that Applicants has complied the said directions. The M.E.C.R. has been registered in 2018. Investigation is being conducted since then. The case relates to documents. Considering the factual aspects of this matter custodial interrogation of Applicants is not warranted.

8. The Anticipatory Bail Application is allowed on the following terms :-

- (i) Interim order dated 03.04.2018 is confirmed.
- (ii) In the event of the Applicants' arrest in connection with M.E.C.R. No.1 of 2018 registered with the Navghar Police Station, Mulund (East), Mumbai, the Applicants be enlarged on bail on executing PR bond in the sum of Rs.25,000/- each, with one or two sureties in the like amount.

(iii) The Applicants shall report to the Investigating Officer of the concerned Police Station once a week every Wednesday between 11.00 a.m. to 1.00 p.m. for a period of four weeks from today and thereafter as and when called.

9. The Anticipatory Bail Application is disposed of.

(M.S.KARNIK, J.)