

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

ANTICIPATORY BAIL APPLICATION NO.1227 OF 2018

1. Hanif Husain Shaikh,
2. Salim Husain Shaikh,
3. Shahrukh Hanif Shaikh,
4. Irfan Salim Shaikh, &
5. Mumtaz Salim Shaikh. Applicants

Versus

1. The State of Maharashtra, &
2. Rukhsana Farooq Ahmed Bidharkundi. Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO.1202 OF 2018

Nirmal Kumar Sharma Applicant

Versus

1. The State of Maharashtra, &
2. Rukhsana Farooq Ahmed Bidharkundi. Respondents

Mr. Aamir Malik, Advocate i/b. Jay & Co. for the Applicants in
ABA/1227/2018.

Mr. Abhijit P. Kulkarni, Advocate for the Applicant in
ABA/1202/2018.

Mr.S.H. Yadav, APP for the Respondent-State.

Mr.R.M. Haridas, Advocate for Respondent No.2 in both ABAs.

CORAM : SARANG V. KOTWAL, J.

DATE : 25th FEBRUARY, 2021

P.C. :

1. A common order is passed in these two anticipatory bail applications because they arise out of the same investigation and the same FIR.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.137/2018 registered at Vimantal (Airport) Police Station, Pune on 3.5.2018, under Sections 406, 418, 504, 506 of the Indian Penal Code. For the sake of convenience, the Applicants are hereinafter referred to by their names.

3. The FIR is lodged by one Rukhsana Farooq Ahmed Bidharkundi. She has stated that the Applicants Hanif and Salim are her uncles. The Applicant Shahrugh is Hanif's son. Applicant-Irfan is Salim's son and the Applicant-Mumtaz is Salim's wife. The first informant has stated that her mother and Applicants Salim and Hanif had a common ancestral property at Gat No.1361, Ganesh Park Hotel, Nagar Road, Wagholi, Pune. A development agreement was executed by

this family with the Applicant-Nirmal (in ABA No.1202/2018). By that agreement, after development, 60% flats were to be retained by the builder-developer and 40% flats were to be given to the family of the first informant i.e. Applicants Hanif, Salim and the informant's mother. The builder Applicant-Nirmal had constructed two buildings on the plots. Her case is that no flats were given to the first informant which she was to receive through her mother. The other Applicants, as members of the family, had taken over the entire 40% flats mentioned in the agreement. This was done with collusion with each other and, therefore, she had grievance against all of these Applicants. She had filed a private case in the Court. Learned Magistrate passed an order under Section 156(3) of Cr.PC. and then this FIR was lodged.

4. Heard Shri Aamir Malik, learned Counsel for the Applicants in ABA No.1227/2018, Shri Abhijit Kulkarni, learned Counsel for the Applicant in ABA No.1202/2018, Shri S.H. Yadav, learned APP for the State and Shri R.M. Haridas, learned Counsel for Respondent No.2.

5. Learned Counsel for the Applicant-Nirmal submitted that the builder-developer has no concern with the dispute of the family members *inter se*. When the agreement was executed, the family members were together. The agreement did not specify which flats were to be given to which family members. He submitted that after completion of the project, he has handed over 40% of the flats to the family and now the informant is raising dispute for which the builder cannot be held responsible. There can hardly be any criminal offence on his part.

6. Learned Counsel for the Applicant in ABA No.1227/2018 submitted that they have already filed a civil suit before the Civil Judge, Senior Division at Pune for partition of their ancestral property and for demarcation of shares of each of the family members. He, therefore, submitted that handing over of the flats in the project would be the subject of the civil suit order. There is no collusion between the builder and the Applicants and other family members.

7. Learned A.P.P, on the other hand, relied on the grievance of the first informant. He submitted that the Applicants Hanif and Salim and their family members have obtained more area than 40% which was agreed in the development agreement. To that, learned Counsel for the Applicant Hanif and Salim submitted that the more area which learned A.P.P was referring to was actually purchased by those Applicants and it was beyond the scope of the development agreement.

8. I have considered all these submissions and in particular perused the development agreement which is the root cause of this dispute. The development agreement was executed in the year 2010. The parties to the development agreement were the Applicant Nirmal on one hand and four others namely, Shaikh Hussain Ladsahab, Shaikh Hanif Hussain (Applicant No.1), Shaikh Salim Hussain (Applicant No.2) and Shaikh Lal Badshah Hussain (since deceased) through his legal heir Shaikh Yunus Lal Badshah. The informant is claiming her right through Shaikh Yunus.

9. The development agreement describes the property and it mentions in Clause (14) that 60% of the built up area was to be used by the developer and 40% was to be given to all the other four parties on the other side i.e. family of the first informant. There was no further demarcation as to how that 40% was further to be divided between those four persons and their heirs. Therefore, the builder was justified in handing over 40% of the built up area to the family as a whole.

10. If there was a dispute between the parties as rightly submitted by learned Counsel for the Applicants Hanif and Salim that it can be resolved only through the decree of civil Court. They have already approached the Civil Court. The informant has not taken any steps of approaching the civil Court to establish the exact share which she was entitled to. Therefore, this criminal proceeding appears to be a method to give go by to the civil proceedings and an attempt to establish her share through the criminal proceedings.

11. The dispute is pending since many years. The

development agreement was entered into in the year 2010. The project was completed in the year 2016. The complaint was filed in the year 2017. Therefore, considering this long lapse of period, I do not see any propriety for permitting custodial interrogation of any of the Applicants. They deserve the protection of order of anticipatory bail. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.137/2018 registered with Vimantal (Airport) Police Station, Pune, the Applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.
- (ii) Anticipatory Bail Application stands disposed of accordingly.

Digitally
signed by
Pradeepkumar
P. Deshmane
Date:
2021.02.26
14:53:11
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(SARANG V. KOTWAL, J.)

Deshmane (PS)