

ISM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2325 OF 2021**

PRABHJYOTSINGH HARCHARANJIT
SINGH SAINI

....APPLICANT

V/s.

THE STATE OF MAHARASHTRA

.....RESPONDENT

**WITH
INTERIM APPLICATION ST NO. 17548 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 2325 OF 2021**

PRITI RAJENDRA CHAND

....APPLICANT

IN THE MATTER BETWEEN

PRABHJYOTSINGH HARCHARANJIT
SINGH SAINI

....APPLICANT

V/s.

THE STATE OF MAHARASHTRA

.....RESPONDENT

**WITH
ANTICIPATORY BAIL APPLICATION NO. 167 OF 2020**

KADANDALE RAMESH RAO

....APPLICANT

V/S.

THE STATE OF MAHARASHTRA

.....RESPONDENT

**WITH
INTERIM APPLICATION NO. 239 OF 2021
IN**

ANTICIPATORY BAIL APPLICATION NO. 167 OF 2020

HITEN VAMANRAI PAREKHAPPLICANT

IN THE MATTER BETWEEN

KADANDALE RAMESH RAOAPPLICANT

V/S.

THE STATE OF MAHARASHTRARESPONDENT

Mr. Sanjeev P. Kdam i/b Mr. Laxman Kanal for the applicant in ABA 2325/2021

Mr. Hrishikesh Mundargi i/b Ms. Swarali Joglekar for intervener in ABA 2325/2021

Mr. Manoj Mohite Senior Advocate a/w Reshma Mutha a/w Mandar Soman i/b Neeta Solanki in ABA 167/2020

Mr. Shoiab Memon a/w Dipika Batheja a/w Hardik Sanghavi a/w Darshil Thakkar i/b Agrud Partners for intervener in ABA 167/2021 and applicant in IA 239/2021

Ms. A. A. Takalkar APP for the State

Mr. Ashok More, IO, Juhu Police Station

CORAM : NITIN W. SAMBRE, J.

DATE: DECEMBER 8, 2021.

P.C.:

1] In both these applications, applicants are seeking pre-arrest bail in C.R. No. 419/2019 registered with Juhu Police Station for offence punishable under Sections 417, 420, 448, 465, 467, 468, 471, 341 r/w 34 of the Indian Penal Code.

2] Prosecution case against the applicant is, Nalanda Shopping Centre was constructed on 34346 sq. ft. Aviation Travels Private Limited was provisionally allotted 11,100 Sq. ft. of built up area on 06/08/1982. Applicant in ABA No. 167/2020 claiming title over aforesaid area of 11,100 Sq. ft. of which provisional allotment made in favour of Aviation Travels Private Limited vide Sale Deed, transferred title in favour of various persons including the applicant in ABA No. 2325/2021. Since the accused was not having any title to the said property, as such was not having any right to transfer title of the same in favour of third person, pursuant to complaint lodged, offence came to be registered.

3] Heard Shri. Mohite, learned senior counsel appearing for the applicant in ABA 167/2020 and Shri. Sanjeev P. Kadam for the applicant appearing in ABA No. 2325/2021. Shri. Mohite, learned senior counsel would urge that applicant was allotted area of 200 Sq. Ft. in basement, 500 Sq. ft. on ground floor (lodging area) 200 Sq. ft. on mezzanine floor (left lobby area) 2700 sq. ft. on first floor and 5700 Sq. ft. open terrace. As such, according to Mr. Mohite, learned senior counsel, provisional allotment letter dated 06/10/1978 and

06/08/1982 confers absolute right in favour of the applicant. He would claim that offence cannot be made out against the applicant as what has been transferred is existing right and not the title. He would claim that long standing possession of the applicant is recognized by the complainant and civil dispute is given colour of offence so as to extract more money or to force the applicants to surrender possession. As such, he would claim that application needs to be allowed thereby granting protection in his favour.

4] Mr. Sanjeev Kadam, learned counsel appearing for the applicant would urge that applicant is purchaser of the right for a valuable consideration. He identified as purchaser without any notice. In the case in hand, on the part of both the applicants, there is absence of criminal intention to commit an offence. In addition to the contentions of Mr. Mohite, learned senior counsel, Mr. Kadam would urge that property is secured and the complainant had every right to proceed against the applicant in Civil Court. As such, applicant's custodial interrogation is not warranted.

5] Learned counsel for the complainant assisted learned APP. It is informed that vide registered sale deeds, title is passed on by the applicant in favour of co-accused that too in fraudulent manner. It is claimed that in some cases, though parties have no title to the property, title is mortgaged and huge loan in crores is obtained practicing fraud on public money and financial institutions. As such, it is claimed that applications are liable to be rejected.

6] Considered submissions.

7] In response to the courts query, both the counsel are unable to satisfy this Court on absolute title created in favour of applicants in relation to property of which they have entered into a transaction.

8] Even if the provisional allotment letter in favour of Aviation Travels Pvt. Ltd is considered, same gives only possessory right and does not confer any title. Accused has by registered deed transferred title in favour of co-accused who have mortgaged the same to a bank by obtaining loans in crores of rupees. As such, the very property of a trust which was allotted for use in favour of co-accused is mortgage

thereby misrepresenting that they have title to the property.

9] Apart from above, what can be noticed is, applicant alleged owner claimed to have transferred title in favour of co-accused without receiving any valid consideration.

10] As such, complicity and intentions of the applicants in practicing fraud, committing forgery can be prima facie inferred which warrants custodial interrogation. As such, no case for bail is made out. Applications stand rejected.

11] At the request of respective counsel for the applicants, interim relief is extended by 4 weeks from the date of uploading of the order.

12] In view of disposal of applications for pre-arrest bail, all connected interim applications also stand disposed of.

[NITIN W. SAMBRE, J.]

IRESH
SIDDHARAM
MASHAL

Digitally signed
by IRESH
SIDDHARAM
MASHAL
Date:
2021.12.23
14:14:58 +0530