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

ANTICIPATORY BAIL APPLICATION NO.2660 OF 2019

Mr. Narsaiah Rajaiah Gajula and ors. .. Applicants

VS.

The State of Maharashtra and ors. .. Respondents

Mr. Satyam R. Dubey for the applicants.

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

Mr. G.V. Tumbada - API, Narpoli Police Station, Bhiwandi.

CORAM : M.S.KARNIK, J.

DATE : DECEMBER 2, 2021

P.C.

1. Heard learned Counsel for the applicants. This is an application for pre-arrest bail in respect of FIR No. I-334/2019 registered with Narpoli Police Station under sections 420, 506 read with 34 of Indian Penal Code against the applicants. The application was listed before this Court on 04/12/2019 when the following order came to be passed.

" Heard.

2. Applicants are the developers, who sold two flats to the complainant. Later, the complainant came to know that flat nos.222 and 223 were mortgaged to the Central Bank of India when proceedings under the SARFAESI Act were initiated by the Central Bank of India.

3. The learned counsel for the applicants submits that the applicants have settled the dispute with the complainant and

Memorandum of Understanding has been entered into. He has placed on record affidavit of the complainant, inter-alia, stating the dispute has been settled with the developers and he has no grievance against them.

4. The learned APP on instructions submits that in the same building other flats sold by the developers are also mortgaged and to that effect, statements of six flat purchasers are recorded.

5. Mr. Saraogi, the learned counsel, on instructions of Mr. Satyam R. Dubey, submits, developers shall resolve/settle the dispute, if any, with other flat purchasers. Statement is accepted.

6. Applicants are directed to implead such other flat purchasers, whose flats are mortgaged to the bank. Amendment to be carried out within seven days from today.

7. Issue notice to added respondents.

8. Prosecutor shall inform the added respondents that the Court shall hear this application on 18 th December, 2019.

Stand over to 18 th December, 2019.

9. In the event of arrest in Crime No.I-334 of 2019 registered with Narpoli Police Station, applicants shall be released on executing PR bond in the sum of Rs.50,000/- each with one or more sureties in the like amount.

10. They shall report to the Investigating Officer on 9 th and 16 th December, 2019 between 11 a.m. to 1 noon."

2. Thereafter on 25/10/2021, this Court passed the order which reads thus :

". From the record it is seen that by an order dated December 4, 2019 this court had issued notice to the added respondents and even the prosecutor was directed to inform the added respondents about the next date of hearing.

2. The office note indicates that the applicants have not supplied spare copy of the application for service on the added respondents. The spare copies be supplied by the applicants by tomorrow.

3. Issue notice to the added respondent Nos.3 to 8, returnable on October 30, 2021.

4. The investigating officer to ensure that the respondent Nos. 3 to 8 are informed about the next date of hearing viz. October 30, 2021. If the added respondents are not represented on the next date, this Court may proceed to decide the application on merits.

5. An affidavit has been filed by the respondent No.2 (complainant) that the matter between him and the applicants is settled in terms mentioned in the affidavit. The same is taken on record.

6. I have interacted with the respondent No. 2 (complainant) Mr. Kulkarni who is personally present in the Court. He says that the terms which have been stated in the affidavit, which has been filed today on his behalf, are acceptable to him and appropriate orders could be passed on the basis of the settlement arrived between the applicants and the respondent No.2 (complainant). The complainant need not remain present on the next date."

3. By order dated 24/11/2021, this Court directed the applicants to report to the Investigating Officer on 27/11/2021. There is no dispute that the applicants reported to the Investigating Officer as per order dated 24/11/2021. It is submitted by learned APP on instructions that even respondents No. 2 to 8 were present on 28/11/2021 when they were informed about the next date of hearing before this Court. In this view of the matter, I have no other alternative but to proceed with the matter in the absence of respondents No. 3 to 8 as this application for pre-arrest bail is pending since 2019. Respondent No.2 has settled with the complainant and the said fact has been recorded in paragraph 6 of the order dated 25/10/2021. The applicants are the developers who had sold the flats to respondents No. 2 to 8. It is later that the purchasers came to know that the flats were mortgaged to Central

Bank of India when proceedings under the SARFAESI Act were initiated by Central Bank of India. The applicants have settled the matter with the first informant (respondent No.2). Learned Counsel for the applicants submits that negotiations with other flat purchasers viz. respondents No.3 to 8 is also on-going and the matter is likely to be settled and the issue will be resolved. Learned APP on instructions informed this Court that flats in question are in possession of the respondents No. 3 to 8. In my opinion, considering that the respondents No. 3 to 8 have not appeared and having regard to the facts of the present case, custodial interrogation of the applicants is not necessary. The applicants are granted interim protection by this Court on 04/12/2019 and have reported to the Investigating Officer as and when called. It is not reported that the applicants have not co-operated with the Investigating Officer. Hence, the following order.

ORDER

- (i) The interim protection granted by this Court stands confirmed.
- (ii) In the event of arrest of the applicants in connection with Crime No. I-334 of 2019 registered with Narpoli Police Station, the applicants shall be released on executing PR bond in the sum of Rs.50,000/- each with one or more sureties in the like amount.
- (iii) The applicants to furnish details of the residential address and other contact details to the Investigating Officer within a week.

(iv) The applicants to report to the Investigating Officer as and when called for.

5. Application is disposed of.

(M.S.KARNIK, J.)