

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

ANTICIPATORY BAIL APPLICATION NO. 2748 OF 2019

1. Bablu Vijay Mali
2. Usha Bablu Saini

.... Applicants

Versus

The State of Maharashtra

.... Respondent

Mr. L. M. Shukla a/w. Veena Yadav for Applicants.
Smt. Veera Shinde, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 23rd SEPTEMBER, 2021

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No. 155 of 2019 registered at Kandivali Police Station, Mumbai on 02/03/2019, under sections 454, 457, 380, 341, 34 r/w. 34 of the Indian Penal Code (for short 'IPC').
2. Heard Shri. Shukla, learned counsel for the applicants and Smt. Veera Shinde, learned APP for the State.
3. The First Information Report (for short 'F.I.R.') is

lodged by one Shivshankar Sinh. He has stated that, he had purchased shop No.2 in Yadav Chawl, Santosh Bhavan, Kandivali (W), from Indrapal Yadav and Ashok Yadav in the year 1983 for Rs.35,000/-. The informant had electricity bill in his name for that shop. There is a ground floor and mezzanine floor in that premises. Since 1983, the informant had kept different tenants on the ground floor and on the mezzanine floor. He used to enter into written agreement with some of them. He was knowing the persons in that area. He was knowing the applicant No.1 since 5 to 6 years before lodging of F.I.R. The informant has mentioned in his F.I.R. that, about 3 years prior to lodging of F.I.R., he had given the ground floor on rent of Rs.8,000/-p.m. to the applicant No.1. Since he was known to the informant, no written agreement was executed. At that time, he had given the mezzanine floor to his relative Akshaykumar and his wife Sanjudevi. In April 2018, Akshaykumar and Sanjudevi had gone to their native place and he had put his lock on the mezzanine floor. On 28/10/2018, one Subhash Yadav informed Akshaykumar that the applicants had broken the lock and had entered on the mezzanine floor and had

taken possession of that floor. Akshaykumar, in turn, informed this fact to the informant. The informant went there. He saw 3 to 4 unknown persons residing on that floor. They told the informant that the applicant No.1 had given that floor to them on rent. The informant approached the applicant No.1 who claimed that, he had purchased that floor from the informant for Rs.20 lakhs. Since the informant had not sold that floor, he asked for the documents in that behalf. Obviously, the applicant No.1 did not have any document. He threatened the informant and because of his threats the informant went back. Akshaykumar came back to Mumbai in December 2018. He found that, his household articles viz. Gas cylinder, utensils etc. were stolen. The others told the informant that the applicants had threatened them that they would lodge false complaints. The informant was afraid of facing false complaints. Therefore, he did not confront the applicants and instead lodged this F.I.R.

4. Learned counsel for the applicants submitted that the applicants had purchased that room for Rs.6 lakhs and had spent Rs.3 lakhs more for repairs. The informant himself was not willing

to execute any document and, therefore, in fact, the applicants are the victims. He further submitted that, the ground floor was also sold by the informant to the applicants. The applicants have one witness who had seen the applicants paying amount of Rs.6 lakhs to the informant. He submitted that the electricity bill and the Gumasta licence, as of today, stands in the name of applicants. Learned counsel for the applicants submitted that the charge-sheet is already filed.

5. Learned APP opposed this application. She submitted that, all these electricity bills and Gumasta licence etc. are procured by the applicants by submitting forged documents. The informant had never given any NOC for such transfer. This is revealed during the investigation. She further submitted that the applicants do not have single document to support their claim that they had paid this money to the informant.

6. I have considered these submissions. The informant is deprived of his legitimate rights over his own property. There is absolutely nothing with the applicants to show that on what basis they were claiming ownership of those particular premises. The

possession is obtained forcibly. Continuation of their possession amounts to continuing trespass. Section 457 of IPC is also applied in this case which is punishable with imprisonment for five years, because there are allegations of theft of articles against the applicants.

7. In this view of the matter, though the applicants were on interim bail for quite some time, their continuous possession over the premises without any authority does not entitle them for any sympathy.

8. The applicant No.2 is a lady, therefore, in the background of this case, she can be protected by an order of anticipatory bail. The other allegations are mainly directed against the applicant No.1. He had absolutely no authority to take possession of the Mezzanine floor and to continue with possession of the ground floor. As of today, no document is in existence in favour of the present applicants entitling them to such possession. As of today, the applicants have no documents to show their ownership over the premises. The offence is made out. However, only on humanitarian ground, the applicant No.2 is protected by

an order of anticipatory bail. Though the charge-sheet in this case is filed, it is clear that the then I.O. has shown undue haste in filing the charge-sheet. The application for anticipatory bail was still pending before this court and the necessity of the custodial interrogation of the applicants was yet to be decided by this court. This also indicates that there could be interference in the investigation of this case.

9. Hence, the following order :

ORDER

- (i) Application for the applicant No.1 is rejected.
- (ii) In the event of arrest of applicant No.2 in connection with C.R.No. 155 of 2019 registered at Kandivali Police Station, Mumbai, the applicant No.2 is directed to be released on bail on her furnishing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)