

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

ANTICIPATORY BAIL APPLICATION NO. 808 OF 2022

Swati Mahendra Bhosale

..Applicant

V/s.

The State of Maharashtra

..Respondent

Mr. Faisal F. Shaikh, for the Applicant.

Mr. R. M. Pethe, APP for the Respondent/State.

Mr. V. V. Purwant, for the Respondent No.2.

CORAM : C.V. BHADANG, J.

DATE : 28 MARCH 2022

P.C.

. The Applicant, apprehending arrest in Crime No.53/2022 of Police Station Vijapur Naka, Solapur City, under Section 420, 447, 451 and 452 r/w. 34 of IPC, is seeking anticipatory bail.

2. The aforesaid crime is registered on the basis of the complaint dated 5 February 2022 lodged by Sarika Sudhir Nikalje. According to the informant, her husband was doing the business as a real estate broker. Mahendra Bhosale who is husband of the Applicant was also in the same business and both of them were known to each other. In February 2019, the Applicant and her husband Mahendra Bhosale had offered to sale

Flat No.602-B, Panash Galaxy at Vijapur Road, Solapur to the informant and her husband for an amount of Rs.45 Lakhs. Accordingly a Deed of Assignment was made on 21 June 2019. The informant claims to have paid Rs.15 Lakhs to Mahendra Bhosale by cash and had passed two cheques for an amount of Rs.15 Lakhs each towards the balance consideration. The cheques were to be encashed after Mahendra Bhosale clearing the encumbrances on the said flat of Axis Bank.

3. The informant claims that on 8 July 2021 the said Bank had reported that an amount of Rs.28,42,492/- is due and outstanding in the loan account. The Builder and the Developer Mr. Amit Ashok Thepde of M/s. Gallore Developers had asked the informant to transfer the said amount to his account so that the loan can be cleared. Accordingly, the informant had transferred the amount of Rs.20,00,047.20 ps. in the account of the Builder by RTGS entry on 16 July 2021.

4. It appears that the parties had also executed a notarised agreement dated 5 March 2020 setting out the terms of the agreement. According to the informant, the possession of the flat was given to the informant at the time of execution of the Deed of Assignment and the informant and her husband had incurred certain amount on the interiors.

5. It is the material case that between 17 July 2021 and 18 July 2021, taking undue advantage of the absence of the informant and her husband, the Applicant and her husband have unauthorisedly entered the flat by braking open the lock and are staying in the said flat illegally in breach of the Deed of Assignment as well as the notarised agreement dated 5 March 2020. It is in these circumstances, that the complaint came to be lodged, which is under investigation.

6. I have heard the learned counsel for the Applicant and the learned APP. With the assistance of the learned counsel for the parties, I have gone through the record.

7. It is submitted by the learned counsel for the Applicant that the dispute is of a civil nature and the transaction between the Applicant and her husband and Mr. Mahendra Bhosale was of a loan and the documents were executed by way of security. He submitted that the evidence is of a documentary nature and the custodial interrogation is not necessary.

8. Learned APP has submitted that the act of the Applicant and her husband of an attempt to take forcible possession of the flat by braking open the lock is of a criminal nature and the matter requires investigation. Learned APP also pointed out that the Maharashtra State Electricity Board, Solapur had also found that Mahendra Bhosale had obtained a second electricity

connection in the flat by showing that there was no electricity connection, although there was electricity connection released in favour of the informant on 11 August 2021. Learned APP has referred to the letter dated 4 March 2022 in this regard written by the Additional Executive Engineer to the Law Officer of Maharashtra State Electricity Distribution Company Limited (MSDCL).

9. I have considered the circumstances and the submissions made.

10. *Prima facie*, it appears that there is a registered Deed of Assignment bearing No.2821/2019 executed on 21 June 2019 followed by an agreement dated 5 March 2020 between the parties. The Deed of Assignment vide clause 3 clearly mentions that the possession of the flat was delivered to the informant. The allegation is that the lock of the flat was broken open and the Applicant and her husband continue to be in possession of the same. There is also record to show that the informant had transferred an amount of Rs.20 Lakhs and odd by RTGS entry to the Builder as there was a loan of Axis Bank on the said flat. Learned APP has also pointed a letter dated 4 March 2022 by the Additional Executive Engineer of MSDCL to its Law Officer MSDCL, which *prima facie* indicates that the second electricity connection is obtained by showing that there was no electricity

connection to the said flat although such electricity connection was released in favour of Sarika Nikalje on 11 August 2021.

11. Considering the over all circumstances, I do not find that a case for grant of pre-arrest bail is made out. The Criminal Application is accordingly rejected.

(C.V. BHADANG, J.)