

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1562 OF 2022

Mohammed Uzair Umar Kaluwala & .. Applicants
Ors.

Versus

The State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO.1858 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.1562 OF 2022

Mohammed Azizur Rehman Faiz .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr.A.M.Saraogi with Mr.Jay Yadav for the Applicant.

Ms.Anamika Malhotra, A.P.P. for the State/Respondent.

Ms.Kajal Singh for the Intervenor.

API Nilesh Patil, attached to Amboli Police Station, Mumbai,
present.

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CORAM: BHARATI DANGRE, J.
DATED : 20th JULY, 2022

P.C:-

1. By the present application, the applicant seeks
protection from arrest in connection with C.R.No.72 of 2022

registered pursuant to the orders being passed by the learned Magistrate on an application filed under Section 156(3) of the Cr.P.C. The said C.R. invoke Sections 255, 256, 257, 259, 260, 406, 420, 465, 467, 468, 471, 506(2), 120(B) read with Section 34 of the I.P.C.

2. Heard the learned counsel for the applicant and the learned A.P.P.

The complainant is one Azizur Rehman Faiz, who has lodged the complaint under Section 156(3) pursuant to which an F.I.R. has been registered with Amboli Police Station.

The complainant alleged that he is the owner of 271.80 sq.mtrs. of land situated in CTS No.650/1/A, which he had purchased vide a registered deed of conveyance executed on 25/05/2021 from M/s.Oshiwara Land Development Corporation, described as vendors. The complainant alongwith four others purchased the said land for consideration, which is mentioned in the said document and the description of the subject matter of conveyance is set out in the schedule of property, being described as, "ALL THAT piece or parcel of land admeasuring 271.8 Sq.Mtrs. or thereabout bearing C.T.S.No.650/1A situate, lying and being at Village: Oshiwara, Taluka : Andheri, District : Mumbai

Suburban". The property was described with reference to the boundaries.

3. The complainant alleged that approximately 40 sq.mtrs. of land was used for the purpose of erection of sub-station and remaining 40 sq.mtrs. was left open.

In the year 2005, his friend Mohammed Umar requested for allotting the open land to him, since he was desirous of carrying out a business activity. Accordingly, by permissive user, he was permitted to occupy the said 40 sq.mtrs. of land out of CTS No.650/1/A. Somewhere in the year 2012-13 Mohammed Umar expired and his son Uzair Umar i.e. present applicant No.1, continued with the business activity. In the year 2015-16, on inspection of the said plot, the complainant, noticed that one Dhaneshwar Balram is occupying the same and when applicant No.1 was questioned about it, he informed that he was his employee.

In July 2021, when the plot was inspected by the complainant, it was found that one Vijay Bhanushali was running a grocery shop. When he attempted to establish contact with applicant No.1, he was not to be traced and on inquiry with Bhanushali, he learnt that Dhaneshwar Balram has leased out the said gala to him. Alleging that the

documents of CTS No.650/1/A are standing in the name of the complainant, he approached the City Survey Officer, Andheri to carry out the measurement and then it was revealed that a deal has been effected in respect of CTS Nos. 582, 583, 584 and on the said CTS Nos. one Evershine Cosmic Building is standing and the plot is declared as SRA from 04/11/2004 and the name of Mohd. Umar Mohd. Husain is shown in Annexure II of the SRA scheme. The complainant, therefore, alleged that though he is a owner of entire C.T.S. No.650/1A, the applicants have inducted the tenants by indicating that he is leasing them out the land situated at 582, 583 and 584 and, thus, he has committed a fraud.

4. During the course of arguments, learned counsel Mr.Saraogi has invited my attention to page 47 of the application, which is a property card in respect of CTS No.650/1/A, which originally stood in the name of Bayramji Jijibhoy (Pvt.) Ltd.. The changes in the land record has been reflected in the property card. It could be seen that in the year 1990, M/s.Oshiwara Land Development Co. Pvt. Ltd. was recorded as a owner. On 06/01/1993, CTS No.650/92 came to be bifurcated/re-assigned new numbers being 650/1, 650/2, 650/3, 650/4, 650/5 and 650/6 admeasuring 39429.1. Entry

dated 16/05/2000 further reflect division of CTS No.650/1 into 650/1/A admeasuring 271.8 sq.mtrs. In the year 2004, the names of the complainant and his family members came to be mutated and it is shown that they have purchased the entire CTS No.650/1/A from Oshiwara Land Development Corporation. From the said document, it is clear that the complainant is the owner of 271.8 sq.mtrs of land is in CTS No.650/1/A.

5. Perusal of the statement of Dhanesh Kesharwani at page 102 of the paper-book would reflect that he entered into a transaction with Smt.Ruksana Mohd. Umar Kaluwala, applicant No.2 as well as the other applicants, who claimed to be entitled to lease out the said premises and in the month of May 2014, accepting the deposit of Rs.2,00,000/- and rent of Rs.30,000/-, the galas were leased out, which were located in CTS Nos.582, 583 and 585. He expressed his intention to purchase the said galas and in December 2014, by a written agreement, he has purchased the same and placed some other persons in its occupation.

6. Learned counsel Mr.Saraogi would submit that the applicants and their predecessor were located in city survey No.650/1/A, but from the document which is in form of deed of

conveyance as well as from the property card in respect of the said city survey number, there is no reference of the applicants and their family. To the contrary, the land record indicate that the complainant and his family members are the owners of the entire area of 271.8 sq.mtrs., which they had purchased from Oshiwara Land Development Corporation by way of registered document. The complainant accused the applicants of dealing with the galas located in the said city survey, though it is shown to be located in CTS Nos.582, 583 and 585, where the name of the predecessor of the applicant is recorded in Annexure II.

7. The accusations faced by the applicant deserves custodial interrogation, since the applicants insist that they have a placement in the CTS belonging to the complainant, being 650/1/A and Mr.Saraogi claims that till today, the applicant is in possession of the said CTS.

The application is, therefore, rejected.

8. In view of the disposal of the application, interim application does not survive and stands disposed off.

(SMT. BHARATI DANGRE, J.)