

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

ANTICIPATORY BAIL APPLICATION NO. 245 OF 2023

Shekhar Hari Patil	...Applicant
vs.	
The State of Maharashtra	...Respondent

**ALONGWITH
ANTICIPATORY BAIL APPLICATION NO. 261 OF 2023**

Nizar Nooruddin Mestri	...Applicant
vs.	
The State of Maharashtra	...Respondent

**ALONGWITH
INTERIM APPLICATION NO. 869 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 261 OF 2023**

Latika Sandip Mukane	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Amol Patankar a/w Mr. Vatsal Thakkar - Advocate for the Applicant in ABA 245 of 2023
Mr. S. A. Mishra and S. Sharma – Advocate for the Applicant in ABA No. 261 of 2023
Mr. Bharat Kumar Nukte – Advocate for intervenor in ABA 261 of 2023.
Mr. H. J. Dedhia – APP Respondent-State.

CORAM : S. M. MODAK, J.

DATE : 27th MARCH, 2023

P. C. :-

1. Heard learned Advocate for both the Applicants, learned

Advocate for the first informant and learned APP.

2. The court of Additional Sessions Judge, Kalyan on 13/01/2023 has rejected the Application for anticipatory bail filed by these Applicants. Now they have approached this Court with a request for anticipatory bail. They are asking for protection from arrest in connection with C.R. No. 145 of 2022 registered with Shahapur Police Station for the offence punishable under Sections 417, 418, 420, 423, 506 read with 34 of the Indian Penal Code and under Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. It is registered against in all three persons. Out of them, the present Applicants are accused nos. 1 and 2 and they are joined because they are builders and accused no. 3 one Mr. P. R. Chavan is an Architect of the project. The intervenor is the first informant.

3. These Applicants have undertaken the project of the building construction and they have offered the flats for sell. It is to be constructed on survey no. 225 Mouje Kalambhe Taluka Shahapur, District Thane. The name of the proposed building is Hariraj Apartment. Both these Applicants run a partnership by name Padmavati Corporation.

4. The sum and substance of the allegation in the F.I.R. is

that the flat was booked by the first informant on 07/05/2012 on second floor ad-measuring 715 square feet for the total consideration of Rs. 15,73,000/-. The amount is to be paid from her own sources as well as by raising loan. The registered agreement was executed on 13/05/2015. The Applicant-Shekhar Patil has assured that he will arrange a loan, however for two years the loan was not arranged.

5. In the year 2015, the first informant realized that construction is of inferior quality and in fact the proposal was submitted to Gram Panchayat, Kalambhe for levying the property taxes and Architect Shri Chavan has given occupancy certificate even though the construction was not completed. The Gram Panchayat did levy the building for taxes, however later on they realized that tax was levied by misleading them and accordingly, notice is issued to all these accused persons.

6. After hearing both the sides, What I gather is that even though there are few allegations made in the F.I.R., now it is argued that the investigation does not pertain only in respect of the allegations mentioned in the F.I.R. but there was violation of provisions of other laws also and it is submitted on behalf of the learned APP and learned Advocate for the first informant that various authorities have initiated the action against these Applicants.

7. Learned APP brought to my notice a show cause notice issued by the learned Resident Deputy Collector, Thane against the Applicants and owner of the land thereby asking their explanation as to why the offence should not be registered against them under Sections 52, 53 and 54 of the Maharashtra Regional and Town Planning Act.

8. Even learned Advocate for the first informant has tendered across the bar a report given by the Additional Director of Town Planning, Thane to learned Collector Thane, thereby expressing difficulty in submitting the opinion as the proposal is incomplete and litigation is pending. Information was sought on the basis of proposal sent by the Applicants for regularization of the unauthorized construction and for issuing occupancy certificate.

9. The first informant is also having other grievance against the Applicants. It is stated that whenever she has followed up with the Applicants, they have harassed her knowingly that she belongs to a member of the SC community.

10. It is also submitted that not only present first informant has lodged the complaint but there are also other flat purchasers from the said project who has lodged the complaint. My attention is invited to such documents filed from page nos. 2 to page nos. 25 of

the compilation of the interim application. My attention is also invited to statement given by the Applicant-Shekhar to the Police on 27/05/2021 which is at page no. 39.

11. It is also submitted that the Applicant-Shekhar is having criminal antecedent and copy of the order passed by the court of additional Sessions Judge, Thane in another crime is filed at page no.183. It is dated 07/01/2017. By way of reply, learned Advocate for the Applicant submitted that in fact there is no offence registered and that is why that application was disposed of. The said order is at page no. 184.

12. Learned Advocate for the first informant submitted that the present Applicants are in the habit of the giving assurances and non complying them and copy of such Hamipatra is filed at page no. 186. There is also a consumer complaint filed against the present Applicant who also runs a similar business in the name of M/s Star Enterprises and that complaint is at page no. 165.

13. According to the first informant this offence is an economic offence, what should be approach of the Court while granting anticipatory bail, there is a reliance placed on following judgments:-

(i) ***Manubhai Ratilal Patel Tr. Ushaben Vs. State of***

Gujarat and Ors. in Criminal Appeal No. 1572 of 2012 decided by the Hon'ble Supreme Court on 28/09/2012.

(ii) *Y. S. Jagan Mohan Reddy Vs. Central Bureau of Investigation* in Criminal Appeal No. 730 of 2013 decided by the Hon'ble Supreme Court on 09/05/2013.

Settlement through mediation

14. It is true that when the anticipatory bail application was pending before the Court of additional sessions Judge, Kalyan, there was an attempt made under the supervision of the learned Judge to settle the matter by referring it to Mediation. Record did reveals that it was settled. It was not only settled with the first informant but with another flat purchaser by name Sunanda Padval. Documents on page no. 48 to page no. 62. About this settlement, the first informant is having serious grievance. It is submitted that the first informant has made protest on 22/11/2022 before the court of seized of anticipatory bail application. It is annexed at page no. 226.

15. Sum and substance of the grievance is that the terms of the settlement were not fulfilled. It is tried to be canvassed that in fact the first informant has filed the complaint not for herself alone

but she has filed it on behalf of the other flat purchasers of the building whose construction is of inferior quality. It is tried to be canvassed as per the provisions of Section 320 of the Criminal Procedure Code such offence cannot be compromised.

16. Learned APP submitted that a false occupancy certificate is submitted by an Architect and the Police are investigating. It is also submitted that even though the construction was not completed and attempt was made by making a representation that it was completed and in fact loans were also obtained from the financial institutions and amount is disbursed in the bank account of the Applicants and now those borrowers have to repay the installments and in fact they have also paid in tough regime of the covid.

17. As against this, learned Advocate for the Applicant-Shekhar submitted that whatever grievances are now made and even made before the Court of the additional sessions judge were made after the settlement was arrived at and also recorded by a judge mediator. It is submitted that in fact the Applicant has accepted the amount not only towards the principal amount but additional amount in all amounting to Rs. 15,81,000/-. The additional sessions judge has taken note of the same in the order. Not only that, it is submitted that the first informant has also executed a deed of the

cancellation by registered document and document is at page no. 65.

18. It is contended that if the first informant is having the grievance why she has accepted the demand draft. It is submitted that all those allegations are after thought or made to harass the Applicant. Learned Advocate for the Applicant – Shekhar relied upon the following judgments:

- (i) Ruchi Agarwal Vs. Amit Kumar Agrawal and Others¹
- (ii) Mohd. Shamim and Ors. Vs. Nahid Begum and Anr.²
- (iii) Mrs. Usha Badri Poonawalla Vs. K. Kurien Babu and Anr.³

19. They are on the point of what should be approach of the court for quashing the prosecution if the settlement is arrived at. In a judgment in case of **Mohd. Shamim** (Supra), it has been observed that settlement has been arrived at and the wife has also filed additional affidavit in support of the settlement. On this background it has observed later on she cannot take a plea that she was not aware of its contents.

20. Learned Advocate for the Applicant-Nizar submitted that in fact he has not been specifically named in the F.I.R.. He invited my attention to the various events and dates. They are referred to

¹ (2005) 3 Supreme Court Cases 299

² 2005 All MR (Cri.) 828 (S.C.)

³ 2005 ALL MR (Cri) 2728

learned Additional Sessions Judge in para no. 8 of the order passed by him. It is true that vide Exh. 20, the complainant has filed application for issuing direction to the Applicant to deposit fresh demand draft. It is explained on behalf of the Applicant that earlier demand drafts have become infructuous in view of the passage of the time. It is also submitted that later on fresh demand drafts were also submitted to the Court. There is one more application filed by the complainant below Exh. 21, therein she has made grievance that as per terms and conditions, the Applicants have not withdrawn the suit bearing Special Civil Suit No. 297 of 2021 filed by the Applicants. Later on the Applicants have withdrawn that suit and the order to that effect is annexed to the application.

21. After considering the above submission, I have looked these issues from two angles. One is whether anticipatory bail can be granted and second is when the settlement is arrived at through judge Mediator what should be the approach of the Court.

22. After looking from both the angles, I am of the opinion that both the Applicants deserve to be granted anticipatory bail. It is true that the scope of the investigation can be widened subsequently that is to say in the F.I.R., there may be certain allegations but new materials can be unearthed during investigation and investigating

agency has a right to carry out investigation on those aspects.

23. In this case, even though initially the offence is only under provisions of Indian Penal Code and under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, later on it was revealed that the provisions of certain Acts are also breached. As on today those authorities are in the process of taking appropriate decision.

24. As on today the Court cannot decide the application on the presumption that those actions will be initiated in future. In that behalf law will take its own course. It may be true that apart from the first informant there may be other flat purchasers who may be having grievance. One of them is Smt. Sunanda Padval but she has entered into settlement agreement on 12/08/2022 and it is arrived at during mediation. Apart from them, prosecution does not come up with the case that there are other flat purchasers.

25. So this Court feels that there is no need for custodial interrogation. If financial institutions have sanctioned the loan, they must have verified the proposal and then sanctioned the loan. If there are certain irregularities as contended on behalf of the first informant, those institutions are at liberty to take action as permissible by law. This is not the case wherein there is a need to

interrogate the Applicants in order to unearth how the money has passed on from the financial institutions to the present Applicants. So they have made out the case for grant of anticipatory bail. There cannot be any dispute about ration laid down in the judgments relied upon by the first informant. But facts are different.

26. It is really strange that the first informant has initially settled the matter through learned judge Mediator. She has even accepted the amount and then she has taken a u-turn and started making various grievances.

27. Learned Advocate for the Applicants are right that if the settlement is not acceptable to her she was free to say no and whatever protest she has made that is after settlement has been arrived at and learned Judge Mediator/District Judge No. 2 has made a report dated 26/08/2022 to the court seized of the matter that is court of the District Judge No. 3. So it was necessary for the parties to abide to those terms.

28. Now the first informant claims that she has realized about other shortcomings later on. But in that eventuality she was bound to repay the amount she has accepted, but it seems that she has accepted the amount on one hand and made complaint on the other hand.

29. If such is a scenario, mediation arrived at through learned Judge Mediator has to be trusted. In fact it can be said that if such practice are allowed that will be a set back to the Mediation. In fact I am compelled to observe that learned Judge who has rejected anticipatory bail has not considered one aspect that the first informant has accepted the amount and also entered into deed of cancellation. This Court is not sitting in a Appellate jurisdiction. In fact when the mediation has been arrived at, the learned Judge ought to have decided that application on different note. This is considered by this Court and hence I feel that if there are grievances for non compliance of the terms and additional grievances forum is different. So case of grant of anticipatory bail is made out. Hence following order is passed:-

ORDER

- (i) Anticipatory bail applications are allowed.
- (ii) In case of arrest in connection with C.R. No. 145 of 2022 registered with Shahapur Police Station for the offence punishable under Sections 417, 418, 420, 423, 506 read with 34 of the Indian Penal Code, the Applicants be released on furnishing Personal Bond and Surety Bond in sum of Rs. 25,000/- each.
- (iii) Applicants are directed to give attendance to the Shahapur Police Station, Thane on every Friday from

10.00 a.m. to 12.00 noon until filing of the charge-sheet.

- (iv) Applicants are directed to co-operate the Police as and when they called.
- (v) Applicant shall not threaten the prosecution witnesses and allure them in any manner.

30. It is made clear that the observations made herein are *prima-facie*, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

31. Applications are disposed of in the aforesaid terms.

[S. M. MODAK, J.]