



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

ANTICIPATORY BAIL APPLICATION NO.775 OF 2021

Morris Benny Kinny

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

WITH

INTERIM APPLICATION NO.1018 OF 2021

IN

ANTICIPATORY BAIL APPLICATION NO.775 OF 2021

Dwarkadas Gangadas Panchmatiya

...Applicant(Complainant)

In the matter between

Morris Benny Kinny and Anr.

Versus

The State of Maharashtra

...Respondents

...

Mr. Kartik Garg i/b. Ms Prajakta Kadu for the Applicant.

Advocate Vaidya i/b. Ms Chaula Sonaki and Mr. H.H. Negi for M/s. Negi and Associates for the Intervenor.

Ms A.A. Takalkar, APP for Respondent -State.

Mr. Bharat D. Rane (Pairavi), PSI, Kandivali Police Station, Mumbai, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED :19th AUGUST, 2023.

P.C.:-

1. At the outset, learned counsel for the Applicant seeks leave to implead the First Informant as party Respondent No.2. Leave is granted. Cause title be amended forthwith.

2. Learned Advocate Vaidya waives service on behalf of Respondent No.2.

3. The Applicant apprehends his arrest in Crime No.668 of 2019 registered with Kandivali Police Station, Mumbai, for the offences punishable under Sections 406, 420, 465, 467, 468 and 471 r/w 34 of the IPC.

4. Learned counsel for the Applicant and Respondent No.2 state that parties have settled their dispute amicably. They have placed on record copy of the notarised consent terms, relevant paragraphs of which read thus:-

- i. That the present consent term/ agreement/ MOU is entered by the party of the Party of the First Part and the Party of Second Part without any force, coercion and pressure as per their free will.
- ii. That Party of the Second Part accepts, admits and Part acknowledges that they would pay Party of the First a total amount of Rs.6,50,00,000/- (Rupees Six core fifty lacs Only) as full and final settlement.
- iii. That in order to show the bonafides of the Party of First Part has represented to give power of attorney to the party of the First Part to sell the property i.e. his farm house and bungalow situated at plot

Survey No.32, Hissa No.1, CTS No.1813, Village Manori, Behind Kinny Resort, Manori Gorai Road, Manori, Malad (West) Mumbai- 400 095, Maharashtra.

- iv. The party of First Part has accepted the said representation and accordingly the party of second part has registered a Power of Attorney registrar of the assurances at sub registrar Borivali East Mumbai dt.28/07/2023 Reg. No-9497 Hereto annexed and marked "Annexure-A" is the copy of the Power of Attorney dated 28/7/2023.
- v. The party of the Second Part promises, assure and undertakes that the terms and conditions mentioned in the power of attorney are binding to them and the same is considered as irrevocable in nature. The Second Party have no objection if the said property is being sold to party first and if the party of the First Part recover the money of Rs. Rs.6,50,00,000/- (Rupees Six core fifty lacs Only) payable and due by the party of the Second Part to party of First Part.
- vi. That on receipt of Rs.6,50,00,000/- (Rupees Six core fifty lacs Only) or on peaceful possession and conveyance of to party of First Part or sale of the bungalow whichever is earlier as per the time being the essence of this consent term by the Party of the First Part the liability of Second Part shall cease.
- vii. That The Party of the First Part accepts admits and acknowledges withdrawing all the legal proceedings, either civil and or criminal, such as the proceedings u/s.138 of Negotiable Instruments Act, civil suits, filed against Party of the First Part within 15 days on compliance of this consent term on satisfaction of this claim in toto.

- viii. The party of the Second Part accept, admit and acknowledges that the said Power of Attorney dated 28/7/2023 is irrevocable in nature till the time is party of the First Part received his amount Rs.6,50,00,000/- (Rupees Six core fifty lacs Only).
- ix. That the Party of the First Part would give consent for quashing of FIR bearing No.668 of 2019 only after receipt of Rs.6,50,00,000/- (Rupees Six core fifty lacs Only) or on recovering the amount of Rs.6,50,00,000/- (Rupees Six core fifty lacs Only) after the sale of the property of the party of the second part whichever is earlier as per the time being the essence of this consent term.

5. The consent terms are signed by the parties and by their respective Advocates. The terms are agreeable to the parties. Hence, the consent terms are taken on record and marked 'X' for identification.

6. Since the parties have settled the dispute amicably and have agreed to file quashing proceedings, in my considered view this is a fit case to exercise discretion under Section 438 of the Cr.P.C. Hence, the application is allowed on the following terms and conditions:-

- (i) In the event of arrest of the Applicant in Crime No.668 of 2019 registered with Kandivali Police Station, Mumbai, he shall be released on bail on executing PR bonds in the sum of Rs.25,000/- with one or two sureties to the like amount;
 - (ii) The Applicant shall report to the concerned Investigating Officer as and when required for the purpose of investigation;
 - (iii) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and /or change of residence or mobile details, if any, from time to time.
7. The application stands disposed of.
8. The interim application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)