

Nikita

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

ANTICIPATORY BAIL APPLICATION NO.944 OF 2023

Sameer Ravindra Jain and Ors. ... Applicants

V/s.

State of Maharashtra ... Respondent

WITH

INTERIM APPLICATION NO.1342 OF 2023

IN

ANTICIPATORY BAIL APPLICATION NO.944 OF 2023

Manikrao Tukaram Satav ... Applicant

V/s.

State of Maharashtra ... Respondent

Mr. Niranjan Mundargi a/w Mr. Ashwin Shete a/w Mr. Abhay Dhadiwal, a/w Ms. Vidhi Karia & Keral Mehta i/b Jayakar Partners, for the Applicant in ABA.

Ms. Pravada Raut, for the Applicant in IA.

Mrs. Rutuja Ambekar, APP for the State/Respondent.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 17, 2023

P.C.:

1. Apprehending arrest in connection with CR. No.704 of 2022, for offences punishable under Section 420 read with 34 of the Indian Penal Code, 1860. The applicants have seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973.

2. According to the informant, he is owner to the 13 R out of Gat No.38 of 2022, a joint venture agreement between informant and the applicants were entered into. For consideration of transfer of informant's right for development, applicants agreed to transfer 7475 sq.ft. constructed area, or amount equivalent to the said area at the rate of Rs.3000 per sq.ft. According to informant, the flats C-1003 and C-1103 were transferred to the informant by registered deed of confirmation executed on 25th October 2018. However, flat No. C-1103 was sold in favour of third party by the applicants on 18th September 2020, which resulted into filing of report against the applicants.

3. The applicants filed application under Section 438 of the Code of Criminal Procedure, 1973, which came to be rejected by order dated 23rd March 2023.

4. On perusal of the documents on record, it appears that creation of right in favour of informant is based on joint venture of agreement between the applicants and the informant. It also prima facie appears that in consideration of informant's rights over 13 R of land, applicants agreed to transfer ownership of 7475 sq. ft. built up area or as equivalent amount at the rate of Rs.3000 per sq. ft. It also appears that sale of flat No.C-1103 prompted informant to lodge report as according to informant, Flat No.C-1103 was transfer in favour of informant. That the agreement of confirmation of deed dated 25th October 2018, is registered document. The terms are not clear about the nature of rights conferred on the informant.

5. It is well settled that immovable property can be transferred in the five recognized manners as contemplated under the provisions of Transfer of Property Act, 1882, viz sale, mortgage, exchange, lease or gift.
6. Prima facie confirmation deed does not fulfil requirements of the aforesaid mode of transfer. For the purpose of deciding real nature of transaction, parties need to lead oral evidence. In the absence of confirmation of either ownership or specified mode of transfer, sale deed executed by the applicant in favour of third party, in this case is not sufficient to dis-entitle the applicants from relief under Section 438 of the Code of Criminal Procedure, 1973.
7. It shall be open for the parties to enforce rights conferred under the referred documents by adopting appropriate proceedings as are permissible in law.
8. However in the facts of the case, the applicants deserves to be protected under Section 438 of Code of Criminal Procedure, 1973. Hence, following order:
 - a) In the event of arrest of the applicants in connection with CR. No.704 of 2022, for offences punishable under Section 420 read with 34 of the Indian Penal Code, 1860, they be released on bail on furnishing P.R. Bond in the amount of Rs.25,000/- each with one or two sureties in the like amount;
 - b) The applicants shall remain present before the investigating officer on 21st August 2023, 23rd August 2023, and 25th August 2023, between 11.00 a.m. to 2.00 p.m. and thereafter, as and when called by the concerned investigating officer;

- c) The applicants shall cooperate with the investigation and make himself available for interrogation whenever required;
 - d) The applicants shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
 - e) The applicants shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
 - f) The applicants shall, at the time of execution of the bond, furnish their address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;
9. The anticipatory bail application stands disposed of. No costs.
10. In view of disposal of anticipatory bail application, interim application does not survive. The same stands disposed of.

(AMIT BORKAR, J.)

Note:-This order is modified as per order dated 22th August 2023.