

ANTICIPATORY BAIL APPLICATION NO.1182 OF 2017
WITH
INTERIM APPLICATION NO.1880 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.1182 OF 2017

...Applicants

...Respondents

Mr. Valvi, API Amboli Police Station, Mumbai, present.

DATED : 17th APRIL, 2023.

1. The Applicants have filed this application under Section 438 of the Cr.P.C. apprehending their arrest in M.E.C.R. No.3 of 2017 registered with Amboli Police Station, Mumbai, for the offences punishable under Sections 406, 420, 465, 467 and 471 r/w 34 of the IPC.

2. Heard Mr. Sandip Shinde, learned counsel for the Applicants, Kajal Singh, learned counsel for the Complainant and Mr. S.V. Gavand, learned APP for the Respondent -State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. It is the case of the Complainant that he had agreed to purchase plot of land admeasuring 680 sq. meters under C.T.S. No.737/9/4 and 861 sq. meters of land under CTS No.737/9/5 of village Oshiwara. The complainant claims that the original property was owned by 5 persons. It is stated that one of the co-owners submitted a declaration stating that other co-owners have no objection to record his name in the survey record. Said declaration was allegedly signed by other co-owners. The Complainant obtained copy of the said declaration under Right to Information Act in the month of March-2014. It is reported that other co-owners, who had allegedly signed the declaration had already expired. It is alleged that the Applicants, who are the co-owners got their names entered in the survey records on the basis of false and forged documents.

4. The Complainant had reported the matter to the police.

Since no FIR was registered, he filed an application under Section 156(3) of the Cr.P.C. It is stated that by order dated 22/08/2014 the learned Magistrate had directed the concerned police to register the FIR. Despite the said order, no FIR was registered, which compelled the Complainant to file another application before the learned Magistrate. By order dated 23/03/2017 the learned Magistrate once again directed the concerned police officer to register the crime as per the previous order dated 22/08/2014. MECR No.3 of 2017 came to be registered on 20/04/2017 more than two years from the date of the order. Apprehending their arrest in the said MECR, the Applicants have filed this application for pre-arrest bail.

5. By order dated 11/07/2017 this Court had granted interim protection to the Applicant with further directions to report to Amboli Police Station once in a week on every Saturday till the next date of hearing. Learned APP states that the Applicants have complied with the said condition.

6. Learned APP states that in the course of the investigation it was revealed that declaration, which was submitted by the Applicants had signatures of other co-owners, who had already expired. He

submits that the original declaration has been replaced and the declaration which is available in the survey office does not bear signatures of the deceased co-owners. He submits that presence of the Applicants is required for custodial interrogation to recover the original declaration.

7. It is stated that the statement of Balasaheb Dudhal, City Survey Officer was recorded on 30/12/2017 and that he had reported that one Vijay Parab was custodian of the said survey record. The statement of Vijay has not been recorded till date. It is seen that apart from entering into correspondence with City Survey Officer, no effective investigation has been carried out to ascertain whether the Applicants had visited the survey office and /or that they had opportunity to tamper with the records, which were in custody of said Vijay Parab. The Applicants are on interim bail since 2017. They have reported to the Investigating Officer and have been interrogated. Hence, at this belated stage, no case is made out for custodial interrogation.

8. As noted above, the crime was reported in the year 2014 but FIR was not registered. Furthermore, despite order dated

22/08/2014 under Section 156(3) Cr.P.C., no crime was registered till the year 2017. Crime was registered on 20/04/2017, almost a month after the subsequent order of the Magistrate, dated 23/03/2017. Investigation has not been concluded even after a period of 6 years from the date of registration of the crime rather the crime has not been effectively and expeditiously investigated. Suffice it to say that speedy trial, which is an implicit right under Article 21, encompasses speedy investigation. No satisfactory explanation is forthcoming from the Investigating Officer for such casual approach in investigating the said crime. It is stated that till date seven Investigating Officers have investigated this crime. It is therefore necessary to direct the Commissioner of Police to personally look into the matter and to take appropriate action against the erring Investigating Officers.

9. Considering that the Applicants are on interim bail from 11/07/2017 and that prima facie there is no material on record to indicate that they are involved in tampering with the records, in my considered view interim relief granted vide order dated 11/07/2017 needs to be confirmed. Hence, the application is allowed.

10. The Applicants shall co-operate with the investigation and

report to the Investigating Officer as and when required by the Investigating Officer.

11. The Applicants shall keep the Investigating Officer informed of their current address and mobile contact numbers, and /or change of residence or mobile details, if any, from time to time.

12. The anticipatory bail application and the interim application stand disposed of. Copy of this order be forwarded to the Commissioner of Police, Mumbai.

(SMT. ANUJA PRABHUDESSAI, J.)

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