

Santosh

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

**ANTICIPATORY BAIL APPLICATION NO. 2996 OF 2022  
WITH  
INTERIM APPLICATION NO. 1787 OF 2023**

SANTOSH  
SUBHASH  
KULKARNI

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SANTOSH SUBHASH  
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Date: 2023.10.31  
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Ganesh Arjun Chukkal ...Applicant

**Versus**

The State of Maharashtra and anr. ...Respondents

Mr. Amit Desai, Senior Advocate, a/w Gopal Shenoy, Laxman  
Sahapur, Vinayak Katti, Viraj Kadam, for the  
Applicant.

Mr. Niranjana Mundargi, i/b Shreya Shrivastava a/w Nikhil  
Randive, for the Intervener.

Smt. Ashwini Takalkar, APP for the State/Respondent.

PSI Ganesh Avhad, present.

**CORAM: N. J. JAMADAR, J.**

**Reserved On : 16<sup>th</sup> October, 2023**

**Pronounced On: 31<sup>st</sup> October, 2023**

**ORDER:-**

1. This is an application for pre-arrest bail in connection with CR No.978 of 2022, registered with Powai Police Station, Mumbai, for the offences punishable under Sections 420, 465, 467 and 471 of the Indian Penal Code, 1860 ("the Penal Code").

2. A Leave and Licence Agreement was executed on 19<sup>th</sup> June, 2018 between M/s. HGP Community Pvt. Ltd., (HGP Community) the licensor and Brice Infrastructure and

Development Pvt. Ltd., (Brice Infrastructure) the licensee, of which the applicant is a Director. Flat bearing No.3102 situated on the 31<sup>st</sup> level of 'B' Wing of 'ADONIA' situated at CTS 22/6, Hiranandani Gardens, Powai, alongwith two covered car parkings were given on a licence to Brice Infrastructure. The applicant executed the said Leave and License Agreement in the capacity of the Director of Brice Infrastructure. It was, *inter alia*, agreed that the term of the licence would be of 36 months commencing from 28<sup>th</sup> June, 2018, the licensee would pay security deposit of Rs.15,30,000/- and monthly license fee of Rs.2,25,000/- with a provision for increase by 5%.

3. In the intervening period, pursuant to an order passed by NCLT on 14<sup>th</sup> January, 2018, the said building 'ADONIA' came to be transferred to Melronia Hospitality Pvt. Ltd. (Melronia). The first informant is the authorized representative of Melronia.

4. Melronia alleged Brice Infrastructure committed default in payment of monthly licence fee which fell due from 20<sup>th</sup> October, 2019. The applicant was repeatedly requested to clear the licence fee. Despite assurances the applicant did not pay the arrears of the licence fee. A notice was issued on

18<sup>th</sup> February, 2020 calling upon Brice Infrastructure to vacate the licenced premises. Eventually, an application under Section 24 of the Maharashtra Rent Control Act, 1999 was filed before the Competent Authority, being Eviction Application No.51 of 2020.

5. In the said proceedings, the first informant alleges, on 20<sup>th</sup> October, 2021, an affidavit was filed on behalf of the Brice Infrastructure to which two false documents were annexed namely; an agreement purported to have been executed by and between M/s. Lake View Developers and Ganesh Chukkal; the applicant, on a stamp-paper of Rs.20/- denomination and a Lease Deed purported to have been executed on 8<sup>th</sup> March, 2019 on five stamp-papers of Rs.100/- denomination in respect of the licenced premises between HGP Community and the applicant, whereunder the licenced premises was shown to have been given on lease for 30 years. Alleging that those documents were forged and fabricated, the first informant lodged a report.

6. It was, *inter alia*, alleged that the intrinsic evidence of those documents clearly indicated that they were forged and fabricated. As regards the Lease Deed purported to be executed on 8<sup>th</sup> March, 2019, it was contended that the HGP

Community had ceased to have control over the licenced premises and it was Melronia to whom licence fee had been paid and yet Lease Deed was shown to have been executed on behalf of the HGP Community. Secondly, Smt. Alka Bhatia Hiranandani, who had purportedly executed the said Lease Deed in favour of the applicant, was not in India, on the date of the execution of the said Lease Deed. The applicant had allegedly forged the signatures of the partners of Lake View Developers on the purported Agreement dated 19<sup>th</sup> February, 2004 and the signature of Smt. Alka Bhatia Hiranandani on the purported Lease Deed. Moreover, the applicant used the forged documents as genuine in the legal proceedings.

7. In the meanwhile, eviction application under Section 24 of the Maharashtra Rent Control Act, 1999 was decided against the applicant. Revision Application preferred by the applicant was also dismissed by the Additional Commissioner, Konkan Division. The applicant instituted a suit being LD Suit No.80 of 2022 before the Court of Small Causes at Mumbai seeking a declaration that the Lease Deed was valid and subsisting and the applicant – plaintiff was a lawful lessee of the suit premises. In the said suit the applicant took out an application for interim injunction. By

an order dated 30<sup>th</sup> September, 2022, the learned Judge, Court of Small Causes, was persuaded to grant temporary injunction opining, *inter alia*, that the defence of the defendants that the instruments relied upon by the plaintiff were false, was a matter for trial.

8. Apprehending arrest, the applicant approached the Court of Session. As the learned Additional Sessions Judge declined to exercise the discretion in favour of the applicant, this application has been preferred for pre-arrest bail.

9. On 21<sup>st</sup> October, 2022, where the application was listed before this Court, upon the learned APP submitting that the documents were apparently forged and, therefore, the applicant be ordered to produce the original documents before the Investigating Officer, the learned Senior Advocate, who then appeared for the applicant, agreed to hand over the original documents to the Investigating Officer. Recording the said statement, this Court granted interim relief.

10. It seems the applicant had produced the original Lease Deed dated 8<sup>th</sup> March, 2019. On 6<sup>th</sup> April, 2023 this Court was informed that the applicant is not in custody of the original agreement dated 19<sup>th</sup> February, 2004.

11. This Court was of the view that the applicant had obtained ad-interim relief by making a categorical statement that the applicant would produce the Agreement dated 19<sup>th</sup> February, 2004 as well and subsequently took a stand that he was not in custody of the said document. Since the applicant had instituted the suit on the basis of the said Agreement dated 19<sup>th</sup> February, 2004, the change in the stand did not merit acceptance. This Court was thus persuaded to vacate the ad-interim protection. Paragraph 6 of the said order reads as under:

“6. The fact that the Applicant has obtained interim relief from the Small Causes Court based on these documents, would prima facie indicate that the applicant is in possession of the documents. Even otherwise, the records reveal that the Applicant was granted interim protection in view of the statement recorded in the order dated 21/10/2022. The Applicant had at no point of time informed this Court that the said document was not in his possession. On the contrary, he had sought adjournment time and again in view of which the interim protection was continued. It appears that the statement was made only to procure interim relief. Considering the conduct of the Applicant, I am not inclined to extend the interim protection granted in favour of the Applicant.”

12. At this stage, it may be necessary to note that under the allegedly forged Agreement dated 19<sup>th</sup> February, 2004, M/s. Lake View Developers, (the precursor of the HGP Community and Melronia) had agreed to pay a sum of Rs.14,50,00,000/- or in the alternative an area admeasuring

4,000 sq. ft. in the saleable component of redevelopment or in the project owned by the Lake View, in consideration of the liasoning services rendered by the applicant. Purported Lease Agreement dated 8<sup>th</sup> March, 2019, after adverting to the said agreement, incorporates a covenant to grant lease of the subject property for a period of 30 years with an option of renewal of a further 25 years, at the rent equivalent to the monthly maintenance of the suit premises. The applicant is the executant of the said Lease Agreement. On behalf of the HGP Community Smt. Alka Bhatia Hiranandani is shown to have executed the Lease Agreement as in the capacity its Director/ authorised signatory.

13. I have heard Mr. Desai, the learned Senior Advocate for the applicant, Ms. Takalkar, the learned APP for the State and Mr. Niranjana Mundargi, the learned Counsel for respondent No.2/first informant.

14. Mr. Desai would submit that the applicant had clarified that for want of proper instructions an incorrect statement was made on behalf of the applicant that the applicant would produce original Agreement dated 19<sup>th</sup> February, 2004. Therefore, the applicant cannot be attributed want of goodfaith. Since the applicant had immediately apprised the

Investigating Officer that he was not in the custody of the original agreement, the insistence of the prosecution to have the custodial interrogation of the applicant to recover the said agreement is wholly unjustifiable. Mr. Desai would urge that till date, the investigating agency had not obtained the specimen hand writing and signature of the applicant. Since the offences revolve around the documents, the question as to whether the documents are forged can only be determined by sending the instruments for the opinion of the Hand Writing Expert.

15. Mr. Desai would further urge that the applicant has relied upon the documents in question and the Court of Small Causes has granted interim injunction protecting the possession of the applicant over the demised premises by observing that the question as to whether those documents are genuine or forged is a matter for trial. According to Mr. Desai, the aforesaid reasoning applies with equal force to the core question which would arise for determination at trial in the instant prosecution. Thus, custodial interrogation of the applicant is not at all warranted.

16. As against this, Smt. Takalkar, the learned APP, would submit that the forgery of both the documents is writ large.

Having obtained ad-interim relief by making a positive statement that the applicant would produce the original Agreement dated 19<sup>th</sup> February, 2004, it was not open for the applicant to urge that the said document is not in his custody. Smt. Takalkar submitted that the said document constitutes the basis of the Lease Agreement as the subject premises is shown to have been given on lease for rent equivalent to monthly maintenance. It was submitted that there is material to show that Smt. Alka Bhatia Hiranandani was not in India on the day, the purported Lease Deed was executed.

17. Mr. Mundargi, the learned Counsel for respondent No.2, submitted that apart from the intrinsic evidence of both the documents, there is a communication in the form of an admission on the part of the applicant that he would clear the outstanding licence fee in the month of January, 2020. If the Lease Agreement was executed on 8<sup>th</sup> March, 2019, the applicant would not have agreed to clear the outstanding licence fee.

18. I have recorded the facts elaborately on purpose. There is no dispute over the fact that the subject premises was given on Leave and Licence to the applicant under the

registered Agreement dated 19<sup>th</sup> June, 2018. The applicant claims subsequent to the execution of the said Leave and Licence Agreement, jural relationship changed and the very same premises was given on lease for a term of 30 years by HGP Community. The said purported lease agreement seems to be a Notarised document.

19. The nexus between the said purported Lease Agreement and the Agreement dated 19<sup>th</sup> February, 2004 lies in the fact that the applicant seeks to draw support and sustenance for the execution of lease from the consideration which flowed under the said agreement dated 19<sup>th</sup> February, 2004. Lake View had allegedly agreed to pay a sum of Rs.14,50,00,000/- towards the liasoning fees to the applicant. It is in this context, the said Agreement dated 19<sup>th</sup> February, 2004 assumes significance.

20. Evidently, there is a time-lag of more than 15 years in executing a further instrument to give effect to the right and obligations emanating from the said Agreement dated 19<sup>th</sup> February, 2004. To add to this, the attendant circumstances of the execution of the purported Lease Agreement appear to be quite telling. *Prima facie*, the Lease Agreement neither refers to the correct date of the anterior agreement between

Lake View and the applicant, nor the correct constructed area agreed to be given in lieu of the sum of Rs.14,50,00,000/- then agreed to be paid. The date of the said agreement is mentioned 19<sup>th</sup> February, 2008 instead of 19<sup>th</sup> February, 2004 and area 6,000 sq. ft. instead of 4,000 sq. ft. Secondly, the said Lease Agreement was purportedly executed by Smt. Alka Bhatia Hiranandani. The Investigating Officer has collected material to show that during the said period the executant was not in India. Thirdly, and most importantly, the contemporaneous conduct of the applicant. In the message sent on WhatsApp on 21<sup>st</sup> December, 2019, in response to the messages sent on behalf of Melronia seeking payment of outstanding licence fee, the applicant seem to have apologized for the considerable delay and inconvenience and assured to make the payment at the earliest in the first week of January. It is pertinent to note the Lease Deed was purportedly executed on 8<sup>th</sup> March, 2019. In the month of December, 2019, the applicant did not set up the changed jural relationship. This circumstance cannot be brushed aside as inconsequential. Fourthly, it was pointed out that pursuant to order of NCLT dated 24<sup>th</sup> August, 2018, Melronia,

the demerged entity that came in existence and HGP Community had no dominion over the subject premises.

**21.** Lastly, the alleged obligation which HGP Community or its predecessor-in-title, owed to the applicant, under the purported Agreement dated 19<sup>th</sup> February, 2004, did exist when HGP Community and Brice Infrastructure entered into a registered licenced agreement whereunder Brice Infrastructure parted with refundable security deposit on Rs.15,30,000/- and also paid licence fee upto October, 2019. The case of subsequent change in jural relationship is required to be seen through this context.

**22.** *Prima facie*, in the backdrop of the attendant facts and circumstances, the allegation that both the documents appear to be forged merits investigation. The submission of Mr. Desai since the Civil Court has protected the possession of the applicant by observing that the nature of the documents set up by the applicant is a matter for trial, and therefore, arrest and custodial interrogation of the applicant is not warranted, does not merit acceptance.

**23.** The Investigating Officer has collected material to show that the Stamp Vendor's Register evidencing the sale of the stamp-papers on which the purported Lease Deed has been

scribed, the name of the HGP Community has been inserted by over writing. The register maintained by the stamp vendor is tampered with. It is the applicant, who would be in a position to throw light on the circumstances in which the purportedly forged instruments came to be executed. Custodial interrogation of the applicant appears indispensable to unearth the authorship of the forgery, the manner thereof and the persons privy thereto.

**24.** It is trite when there are serious and *prima facie* credible allegations of forgery of the documents and use of forged documents in judicial proceedings, it is imperative to have effective investigation. In the face of such allegations an offer to join in the investigation armed with an order of pre-arrest bail is of no use from the point of view of effective investigation. Custodial interrogation, as is well known, is qualitatively different. Merely because a proceeding in which the legality and validity of the apparently forged instrument is subjudice, the cause of effective investigation and prosecution cannot be jeopardised.

**25.** It would be suffice to make a reference to a recent judgment of the Supreme Court in the case of *Pratibha*

*Manchanda and anr. vs. State of Haryana and anr.*<sup>1</sup>, wherein the Supreme Court repelled the submission that during the pendency of a civil proceeding wherein the genuineness of the documents was an issue, custodial interrogation is not warranted. Setting aside the order passed by the High Court granting pre-arrest bail to the accused therein, the Supreme Court observed, *inter alia*, as under:

“28. It is immaterial that the genuineness of the 1996 GPA is already sub-judice before the Civil Court in the civil suit pending between the parties. The appellants, owing to their age and residential status, cannot be expected to await indefinitely for the outcome of these civil proceedings. Regardless, the pendency of these cases does not estop the issues of forgery and fabrication being considered in the course of criminal investigation. The facts of the case speak for themselves and an element of criminality cannot be ruled out at this stage. Whether or not the alleged offences were committed by Respondent No.2 and his co-accused in active collusion with each other can be effectively determined by a free, fair unhampered and dispassionate investigation. In the peculiar facts and circumstances of this case, custodial interrogation of not only Respondent No.2 but all other suspects is, therefore, imperative to unearth the truth. Joining the investigation with a protective umbrella provided by pre-arrest bail will render the exercise of eliciting the truth ineffective in such like case. ....”

(emphasis supplied)

26. The Supreme Court has thus enunciated that irrespective of pendency of civil proceeding where there is *prima faice* material to show an element of criminality in setting up and banking upon documents, issue of forgery and

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<sup>1</sup> 2023(8) SCC 181.

fabrication of documents can be legitimately considered in the course of criminal investigation.

**27.** In view of the aforesaid enunciation and the attendant facts and circumstances, adverted to above, in my view the applicant does not deserve the exercise of discretion.

**28.** Hence the following order:

**: O R D E R :**

- (i)** Application stands rejected.
- (ii)** It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.
- (iii)** In view of disposal of ABA/2996/2023, IA/1787/2023 does not survive and stands disposed.

**[N. J. JAMADAR, J.]**