

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

ANTICIPATORY BAIL APPLICATION NO.3089 OF 2022

1. Intekhab Hasan Syed
2. Shabnam Intekhab Syed ..Applicants
VS.
The State of Maharashtra and anr. ..Respondents

Adv. Ghanshyam Upadhyay a/w Adv. Akash Mishra i/b. Adv.
Manoj Singh for the Applicants.
Ms. Siddhi Bhosale for respondent No.2/complainant.
Ms. P. N. Dabholkar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 27, 2023

P.C. :

- 1.** Heard learned counsel for the applicants, learned counsel for the complainant and learned APP for the State.
- 2.** This is an application for pre-arrest bail in respect of the offence punishable under Sections 420, 406, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3 and 13 of of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereafter 'the MOFA' for short) in connection with FIR No.44 of 2018 dated 06/02/2018 registered with Mira Road Police Station.

3. The application is vehemently opposed by learned counsel for the complainant contending that the applicants have not honoured the settlement terms as assured before the learned trial Court when initially the applicants were granted anticipatory bail.

4. In brief, it is the allegation of the complainant that the applicants were to sell flat Nos.401 and 402 to the complainant. Substantial consideration of Rs.22,97,100/- and Rs.23,34,150/- respectively was paid for the said flats. There arose certain dispute between the complainant and the applicants. It is the case of the learned counsel for the applicants that the complainant was not in a position to pay balance consideration. According to learned counsel for the applicants the complainant permitted the applicants to sell Flat No.402 and appropriate amounts received from the said sale towards the balance consideration of flat No.401. This is seriously disputed by learned counsel for the complainant. Factually flat No.401, pursuant to the filing of the FIR, has been handed over to the complainant. The allegation of the complainant is that the applicants have

sold flat No.402 to third person and hence cheated the complainant. The trial Court by the order dated 29/06/2018 granted an opportunity to the parties to amicably settle the matter. In paragraph 3 of the order dated 29/06/2018 it is recorded thus :-

"3. Today advocate of the complainant's advocate Mr. Gaurish Kadam with applicant's advocate Mr. Pande have appeared before the court and Mr. Gaurish Kadam has requested the court to consider the relief in view of the fact that parties have settled the matter amicably but as the flat in dispute is in possession of someone else that will take time to evict him and in the meantime his client also will be able to arrange for outstanding amount. Hence, having consider said submissions no purpose would be served by either keeping the matter pending on the file of this court or rejecting the relief particularly when matter is likely to be settle amicably out of the court. Hence, in view of the aforesaid facts and as the custodial interrogation of the applicants are not necessary there is no hurdle in granting the relief."

5. The application for anticipatory bail came to be allowed. The applicants did not honour what was stated by them in paragraph 3 of the order dated 29/06/2018. The applicants therefore filed an application for cancelling the anticipatory bail granted. The application came to be allowed and bail granted in favour of the applicants came to be cancelled. In paragraph 4 of the order dated 29/01/2021

the trial Court has observed thus :-

"4] Though it is the ground of the opponents that outstanding payment is there, however, even there is no correspondence to that effect between the said parties filed on record to again substantiate the said fact. It is apparent that both the parties are just making allegations against each other but are not ready to comply with the assurance given by them before the court before passing order dated 29.06.2018. Having regards to these facts in my opinion unless the order of bail is cancelled no settlement would be arrived between the parties."

6. Learned APP submitted that the applicants were not attending the trial and therefore non-bailable warrant was issued. Learned counsel for the applicants submitted that the applicants were not served with any summons. Be that as it may, learned counsel for the applicants, on instructions, undertakes that the applicants will appear regularly before the trial Court. No purpose at this juncture will be served by cancelling the anticipatory bail which was granted to the applicants as far back in the year 2018. It will of course be open for the complainant to resort to the other remedies which are available in law apart from pursuing the civil proceedings which have already initiated by the complainant.

7. Learned counsel for the applicant submitted that

during the pendency of this application, an agreement which the applicants have entered into in respect of flat No.402 with the third person has been cancelled and now the applicants are even willing to handover possession of flat No.402 to the complainant. He however submits that there is some dispute about balance payment and upon the complainant making the balance payment the flat will be handed over.

8. On the last occasion I had called upon the parties to negotiate a settlement. I am informed that the settlement is not possible.

9. Learned counsel for the applicants on instructions makes a statement that so far as flat No.402 is concerned, the same shall not be dealt with or disposed of or any third party interest created till the trial is over. An undertaking to this effect be filed within a period of one week from today. Statement is accepted.

10. Considering that the applicants have handed over flat No.401 and the dispute pertaining to flat No.402 of which the applicants are willing to handover possession subject to

payment of balance consideration is essentially of a civil nature, the custody of the applicants at this distance of time by cancelling the anticipatory bail already granted would serve no purpose. The charge-sheet has been filed and the investigation is complete.

11. Hence, the following order :-

ORDER

- (a) Application is allowed.
- (b) In the event of arrest in connection with FIR No.44 of 2018 registered with Mira Road Police Station, the applicants-Intekhab Hasan Syed and Shabnam Intekhab Syed shall be released on bail on furnishing P.R. Bond to the extent of Rs.25,000/- each with one or more sureties in the like amount.
- (c) The applicants shall attend the trial regularly.
- (d) The applicants to co-operate with the Investigating Officer.
- (e) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

(f) The applicants shall furnish the details of their residential addresses and phone numbers to the investigating officer.

(g) The statements recorded above to be abided by the applicants.

12. The Anticipatory Bail Application stands disposed of.

(M. S. KARNIK, J.)