

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

ANTICIPATORY BAIL APPLICATION NO.374 OF 2021

Satish Chhagan Mirgule Applicant

versus

State of Maharashtra & Anr. Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO.430 OF 2021**

Shivpoojan Ramnayan Nishad Applicant

versus

State of Maharashtra & Anr. Respondents

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- Mr. Ashutosh R. Gole, Advocate for Applicant in ABA/374/2021.
- Mr. Ernest Tuscano i/b. Anil D'souza, Advocate for Applicant in ABA/430/2021.
- Ms. Mahalakshmi Ganapathy, APP for the State/Respondent.
- Mr. Abhay Daji Bane, Respondent No.2-in-person, present in Court.

CORAM : SARANG V. KOTWAL, J.

DATE : 04th APRIL, 2024

P.C. :

1. Both these applications are decided by this common order today, because they arise out of the same subject matter.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.286/2019, dated 03/03/2019, registered with Tulinj Police Station, Palghar, under sections 406, 420 r/w 34 of the Indian Penal Code and under sections 3 and 4 of the Maharashtra Ownership of Flats Act.
3. For the sake of convenience, the Applicant in Anticipatory Bail Application No.374 of 2021 is referred to as Satish and the Applicant in Anticipatory Bail Application No.430 of 2021 is referred to as Nishad.
4. Heard Mr. Ashutosh R. Gole, learned counsel for the Applicant and Ms. Mahalakshmi Ganapathy, learned APP for the State.
5. The FIR is lodged by one Abhay Bane, who is made party Respondent No.2 in this case. He has stated that Satish was residing in the informant's building on the second floor. In the year 2015, the informant told Satish that they wanted to purchase a room. Satish introduced the informant to Nishad.

Both of them told the informant that they were having a project at Nalasopara (E). The informant told that he wanted to purchase two rooms. They showed him room No.207 near Marathe School, Tujinj, Nalaopara (E). The purchase amount of the room was fixed as Rs.6,30,000/-. The informant gave Rs.4 lakhs in cash. They executed an agreement in the name of Shivshakti Enterprises. The FIR mentions that Satish told the informant that Satish and Nishad were partners and would build that building. The FIR goes on to mention the different amounts which the informant had paid through cash and cheques. In all, he paid Rs.8 lakhs, but till the lodging of the FIR and even till today, the rooms were not given to the informant. On this basis, the FIR is lodged.

6. Learned counsel for the Applicant Satish submitted that the Applicant Satish was an electrician, who was residing in the informant's building. Therefore, it was not possible to believe that the informant would not know that Satish was merely an electrician and was not developing any project. He submitted that the agreements are executed in the name of Shivshakti

Enterprises through the co-accused Nishad. The agreement as well as the receipts including the cash receipts were signed by Nishad and not by Satish. The informant has implicated Satish only because Satish introduced the informant to Nishad. Beyond that, the Applicant Satish has not played any role.

7. Learned counsel for the Applicant Nishad submitted that the said accused Nishad is not contacting the learned counsel and therefore he is not in a position to make any statement regarding whether the amount was returned. On merits, he submitted that the Applicant Nishad is protected by ad-interim relief. The transaction is from the year 2015 and the FIR is lodged in the year 2019 and therefore his custodial interrogation is not necessary.

8. Learned APP submitted that the FIR mentions the roles played by both the accused. There are bank entries showing that the amount had gone in the Nishad's firm's account. Therefore, the allegations in the FIR are true. The first informant is present

in the Court. He conveyed to the Court through the learned APP, that, the matter is not settled between the parties.

9. I have considered these submissions. The previous orders passed in both these applications refer to the submissions made by the Applicants that the matter was being settled. The order dated 19/01/2022 specifically refers that the learned counsel for the Applicant Nishad in Anticipatory Bail Application No.430 of 2021 had stated that the Applicant had settled the matter with the informant. The Court had observed that the said statement was required to be tested and therefore had directed the Applicant to add the informant as a party Respondent. The informant is present before the Court. He categorically states that the matter is not settled. Therefore, the statement was incorrect. The ad-interim relief was obtained on the basis of a wrong statement. Learned counsel for the Applicant Nishad submitted that the statement was made on the basis of instructions provided by the client. In this view of the matter, the previous grant of ad-interim relief to the Applicant Nishad will not help him.

10. As far as the Applicant Satish is concerned, there is nothing to show that he himself had received that money for himself. The receipts executed and annexed to the application show that the money was received by the Applicant Nishad. The agreement was signed by Nishad. Receipts were also signed by Nishad. Those receipts were concerning receipt of cash amount as well. In this view of the matter, the Applicant Nishad's role is clearly made out. He does not deserve any protection.

11. As far as Applicant Satish is concerned, there is substantial force in the submissions made by learned counsel appearing for him and therefore he can be protected u/s 438 of Cr.PC.

12. Hence, the following order :

ORDER

- (i) The Anticipatory Bail Application No.430 of 2021 preferred by the Applicant Shivpoojan Ramnayan Nishad is rejected.

- (ii) Anticipatory Bail Application No.374 of 2021 is allowed.
- (iii) In the event of his arrest in connection with C.R.No.286/2019, dated 03/03/2019, registered with Tulinj Police Station, Palghar, the Applicant Satish Chhagan Mirgule, is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (iv) Both the applications are disposed of accordingly.

(SARANG V. KOTWAL, J.)