

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

ANTICIPATORY BAIL APPLICATION NO.174 OF 2024

Jay Chandraprakash Shukla & Anr.Applicants
Versus
State of Maharashtra Respondent

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WITH
INTERIM APPLICATION NO.380 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.174 OF 2024

Ms. Neha Patil, Advocate i/b. Vighneswar Subramanian a/w.
Omkar Patil for the Applicants.

Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.

Mr. Rizwan Merchant, Advocate i/b. Tarun S. Sharma a/w
Mahesh Patil, Varsha Sharma for the Intervenor in
IA/380/2024.

CORAM : SARANG V. KOTWAL, J.
DATE : 30th JANUARY, 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.652/2023 registered with Kashimira Police Station, Mira-Bhayander under Sections 420, 406, 465, 467, 468, 471 read with 34 of IPC.

2. Heard Ms. Neha Patil, learned counsel for the Applicants, Ms. Mahalakshmi Ganapathy, learned APP for the

Respondent-State and Mr. Rizwan Merchant, learned counsel for the Intervenor in IA/380/2024.

3. The FIR is lodged by one Mustali Ibrahim Sidhpurwala. He has stated that he was having a construction firm by the name Raj Builders & Developers. It was a Partnership firm. He had purchased Survey No.20/7 and 20/5 at Ghodbandar. The first informant got in contact with the present Applicants. They represented to the informant that they would get customers for his projects. The informant told the Applicants to deposit Rs.2,25,00,000/- as a security deposit. The Applicants paid Rs.2,16,00,000/- and for that purpose, a sole selling agreement was executed by the parties.

4. There are allegations in the FIR that subsequently the dispute arose between the parties. On one occasion the Applicant No.1 entered the informant's land unauthorizedly and broke the cabin for which separate C.R. No.772/2019 under Sections 447, 143, etc of IPC was lodged at Kashimira Police Station.

5. The informant and his partner decided to sell Survey No.20/5 & 20/7 to one Sanjay Surve through his construction company, namely, 'Seven Elean Construction Company'. That land was to be sold for Rs.10 Crores. Sanjay paid Rs.1 Crore to the informant. In the meantime, the Applicant No.1 Jay Shukla lodged FIR at Kashimira police station vide C.R. No.529/2021 under Sections 420, 406, 409, 34, 120-B of IPC. Sections 3 & 4 of the MPID Act were also added. In connection with that FIR, the informant and his son were granted anticipatory bail. They had deposited amount of Rs.5 Crores in this Court in that connection.

6. On 10.6.2021, the Applicants filed Regular Civil Suit No.400/2021 before Civil Judge (S.D.), Thane against M/s. Raj Builders and Developers i.e. the firm of the informant, for injunction. While filing the suit, any possession letter was not annexed with the list of documents. Subsequently on 28.9.2021, the possession letter purportedly dated 24.6.2019 was submitted in the Court.

7. There are further allegations that, the Applicants had taken some amount from one Narayan and one Mankaram, but, those amounts were not deposited with the informant's company. It is the informant's case that he had not given possession of his land to the Applicants. They had forged the possession letter and had submitted it in the Court. On this basis, the FIR is lodged.

8. Learned counsel for the Applicants submitted that the Applicant No.1 himself had lodged C.R. No.529/2021 at Kashimira Police Station, as mentioned earlier. Thereafter the Applicants have taken the steps to file Regular Civil Suit No.400/2021 before the Civil Judge, Senior Division, Thane for injunction against the informant's company. As far as the possession letter is concerned, she submitted that it is a genuine document. In any case the original possession letter is submitted by the Applicants before the investigating agency, which is seized by them under a panchnama dated 27.12.2023.

9. Learned counsel submitted that the possession letter was submitted during the court proceedings but the

occasion to rely on that possession letter is yet to arise. The Civil Court had decided the Exhibit-5 application. Initially the status quo was granted but it was subsequently not confirmed on the observations that there was no document showing possession of the Applicants. She submitted that thus the possession letter in question was not actually used causing any wrongful gain to the Applicants or wrongful loss to the informant.

10. Learned APP submitted that the letter in question has been seized by the investigating agency. Apart from this submission, learned APP relied on the allegations made in the FIR. She submitted that except for producing this letter, the Applicants have not attended the police station for investigation purposes.

11. Learned counsel for the intervenor – first informant invited my attention to the two orders passed by the learned Civil Judge. At the first instance, the status quo was granted in favour of the Applicants. Subsequently that order was not confirmed. He submitted that if that possession letter was in existence; nothing prevented the

Applicants from tendering it at the first instance at the time of filing of the suit itself and in any case, at least at the stage of arguments and decision on Exhibit-5 in the said suit. He submitted that non production of that letter earlier itself shows that it was brought into existence to cause loss to the first informant. He submitted that the Applicants have suppressed from the Court about the FIR pending against them vide C.R. No.772/2019 at Kashmirira police station. He, therefore, submitted that the Applicants may not be protected.

12. I have considered these submissions. As far as the possession letter is concerned, as of today it is already in the custody of the police. Therefore, there is no likelihood of tampering with that particular document. The Applicants need to cooperate with the investigation and attend the concerned police station. There is a background of enmity between the parties and the FIRs are filed by both the parties against each other. The informant will have to demonstrate as to in what manner wrongful loss is caused to him because of that possession letter in particular.

13. Considering all these aspects today I am adjourning the matter with ad-interim protection to the Applicants with directions to them to attend the concerned police station. Hence, the following order:

ORDER

- (i) In the event of their arrest in connection with C.R.No.652/2023 registered with Kashimira Police Station, Mira-Bhayander, till the next date, the Applicants be released on bail on their executing PR. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.
- (ii) This order shall operate till 14.3.2023.
- (iii) The Applicants shall attend the concerned Police Station from 20.2.2024 to 23.2.2024 between 1:00 p.m. to 5:00 p.m. and thereafter as and when called. The Applicants shall cooperate with the investigation.
- (iv) Stand over to 14.3.2024.

(SARANG V. KOTWAL, J.)