

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

ANTICIPATORY BAIL APPLICATION NO.192 OF 2024

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Vinod Bhaichand Nisar & Anr. ..Applicants
Versus
The State of Maharashtra ..Respondent

**WITH
INTERIM APPLICATION NO.1120 2024
IN
ANTICIPATORY BAIL APPLICATION NO.192 OF 2024**

Virendra Tadaknath Dubey ..Intervenor

IN THE MATTER BETWEEN

Vinod Bhaichand Nisar & Anr. ..Applicants
Versus
The State of Maharashtra ..Respondent

Mr. Vincent D'silva i/by Sujit A. Mane, for the Applicant.
Mr. Swapnil V. Walve, APP for the Respondent/State.
Mr. Phadosh Tiwari, for the Intervenor.

CORAM : SARANG V. KOTWAL, J.

DATE : 22nd AUGUST, 2024

P. C.

1. The Applicants are seeking anticipatory bail in connection with M.E.C.R. No.6 of 2016 registered with Andheri Police Station, Mumbai under Sections 420, 461, 467, 468, 469, 471 r/w 34 of IPC.

2. Heard learned counsel for the Applicants and learned App for the Respondent/ State.

3. The FIR is a result of the complaint made by one Virendra Dubey. The subject matter is the SRA project on CTS No.81/1 to 6, 168 to 174 at Gundavali, Taluka Andheri, Mumbai. According to the first informant, the property stands in the name of his father, who had passed away. The property was in his possession. The property was occupied by hutment dwellers. They formed a society by the name Triveni Sangam Co-operative Housing Society Ltd. The accused Nos.21 to 23 were the office bearers of the society. M/s. Charmi Nirman and M/s. Salient Traders were appointed as the developers of the society. Initially, it was a proprietorship firm and the Applicant No.1 was the proprietor. Subsequently, the Applicants and others formed a private limited company and the development project was taken over by that company. The allegations in the FIR are that about twenty hutment dwellers produced false documents in the nature of forged electricity bills to claim their rights to possess their tenements in the project. This is the gist of the allegations in the FIR.

4. Learned counsel for the Applicants submitted that the Applicants had entered into an agreement way back in the year 2006 for purchasing that land from the actual owner of the property and, therefore, the Applicants had preferential rights to develop that property. He submitted that the allegations were made by the

informant in the year 2014 itself. The FIR is lodged in the year 2016 and suddenly after so many years the Applicants were called by the Police for investigation.

5. Learned counsel submitted that since August, 2012 the Applicants have not been associated with the project. He submitted that the informant had filed civil suits and private complaints. Learned counsel invited my attention to Exh.A annexed to the additional affidavit showing that, civil suit No.2359 of 2010 was dismissed by the learned Judge of City Civil Court, Dindoshi. Learned counsel also invited my attention to the Application No.160 of 2013 preferred by the first informant and others against M/s. Triveni Sangam Co-operative Housing Society, M/s. Charmi Nirman and M/s. Salient Traders. The Application preferred by the first informant and others was rejected by the High Power Committee *vide* the order dated 5th April, 2016. Learned counsel further invited my attention to the order dated 20th February, 2017 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Revision Application No.824 of 2015, which was preferred by the first informant, in which both the Applicants were Respondents. The subject matter of that Revision Application was rejection of the Application made by the first informant for investigation under Section 156(3) of CrPC. Learned counsel therefore submitted that the first informant had suppressed all these facts in his FIR and had obtained another order under Section 156(3) of CrPC by suppressing material facts. He therefore submitted that the

complaint is malafide. The allegations are not true. They pertain to the incidents which had taken place much prior to 2012 and therefore Applicants need to be protected under Section 438 of CrPC.

6. Learned counsel appearing for the intervenor/first informant could not answer any of the issues raised by the learned counsel for the Applicants in the Court today.

7. Learned APP on instructions submitted that the Applicants have attended the concerned Police Station and have co-operated with the investigation.

8. In this situation, I find force in the submissions made by learned counsel for the Applicants that the allegations pertain to the incident that took place, many years back. The first informant failed to get any orders from the different forums and after that apparently had obtained an order under Section 156(3) of CrPC, as a result of which present FIR was registered, in which the Applicants are seeking anticipatory bail. Considering all these aspects, the Applicants deserve to be protected under Section 438 of CrPC. Hence, the following order :-

ORDER

- (a) In the event of their arrest in connection with M.E.C.R. No.6 of 2016 registered with Andheri Police Station,

Mumbai, the Applicants are directed to be released on bail on their executing PR bond of Rs.30,000/- each with one or two sureties each in the like amount.

(b) The Application stands disposed of.

(c) The connected Intervention Application is also disposed of.

(SARANG V. KOTWAL, J.)