

Ajay

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

ANTICIPATORY BAIL APPLICATION NO. 140 OF 2025

Sameer S/o. Haji Latif Merchant and Anr. .. Applicants

Versus

The State of Maharashtra and Anr. .. Respondents

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- Mr. Ashok M. Saraogi, Advocate for Applicants.
 - Ms. Shilpa Gajare – Dhumal, APP for Respondent No.1 – State of Maharashtra.
 - Mr. Tajammul Khan, Advocate i/by Mizan Khan, Advocate for Respondent No.2 – Intervenor.
 - API – Mr. Avinash Shelke, IO Colaba Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 17, 2025.

P.C.:

1. Heard Mr. Saraogi, learned Advocate for Applicants; Ms. Gajare – Dhumal, learned APP for Respondent No.1 – State of Maharashtra and Mr. Khan, learned Advocate for Respondent No.2 – Intervenor.

2. Mr. Khan, learned Advocate for Respondent No.2 – Intervenor is permitted by the Court to file his vakalatnama within a period of one week from today. Registry is directed to accept the same.

3. This is an Application under Section 438 of the Code of Criminal Procedure, 1973 seeking Anticipatory Bail in connection with FIR No.292 of 2024 registered with Colaba Police Station for the

offences punishable under Sections 471, 468, 465 and 420 read with 34 of the Indian Penal Code, 1860 (for short “**IPC**”).

4. Indictment of the Applicant before me is for the offences of cheating and forgery. Applicants before me are arraigned as Accused Nos.1 and 2. Complainant before me is a person called Anwar Mohd. Pishori aged 73 years. Accused No.1 – Applicant No.1 before me is known to the Complainant since many years which is gathered from the complaint. In 2017, Applicant No.1 required certain finance from development / construction of a property which was in the close vicinity of the Complainant’s existing garment / clothing shop in Memonwada area, Mumbai – 400 003. Complainant and one of his other friend called Niyaz Shaikh agreed to provide finance to the Applicants. In turn Applicants showed them the subject property which is stated in the complaint as a building which was being constructed / developed by him in / at 87, Memonwada Road, Behind Noor Hospital, Mumbai – 400 003 called ‘Safiya Haji Heights’. Complainant and his friend Mr. Niyaz Shaikh agreed to purchase the subject property which is nomenclatured as Shop Nos. M-1, M-2 and M-3 as stated in the complaint and agreed to give finance / money in lieu thereof to the Applicant No.1.

5. Between 2017 and 2019, Complainant and Mr. Niyaz Shaikh parted with an amount of Rs.38,00,000/- and Rs.75,00,000/-

respectively totalling to Rs.1,13,00,000/- leaving a balance amount of Rs.62,00,000/-. When the construction was completed, naturally the Complainant and Mr. Niyaz Shaikh wanted to take possession and they showed their willingness to pay the balance amount of Rs.62,00,000/- also. It appears that this balance amount was also paid due to which the Complainant was put in possession of Shop No.M-3 whereas Mr. Niyaz Shaikh was put in possession of Shop Nos.M-1 and M-2 as stated in the complaint. Putting in possession is denied by Applicants. It is seen that the parties did not enter into any Sale Agreement / Registered Agreement with respect to the subject immovable property, but the Complainant has no grievance with respect to they being put in possession. However it is the Applicants' case that the Complainant had barged into the subject property alongwith Mr. Niyaz Shaikh but that would be the matter of investigation and trial.

6. The issue raised before me qua the crime which is registered is on account of a subsequent incident namely when the lift was to be installed in the building called 'Safiya Haji Heights' and for which documentation was required to be filed with the Public Works Department, Government of Maharashtra for seeking appropriate permissions through the Company which was appointed by the Developer / the Applicants for installation of the lift. The name of the Company is 'M/s. Jupiter Elevators'.

7. Allegation of the Complainant is that when the documentation was submitted by this Company to the Public Works Department, Government of Maharashtra, it was unearthed that there was misrepresentation made by the Applicants claiming to be the owner of the building and they appended forged rent receipts of the occupants of the very subject properties which are in occupation of the Complainant and Mr. Niyaz Shaikh (Shop Nos.M1 to M3).

8. Ms. Gajare – Dhumal, learned APP for the State informs the Court that when the investigation was done, it was revealed that Applicants have not only committed forgery by filing forged rent receipts but also forged the licences and therefore the crime is registered.

9. One of the grievance expressed by the prosecution is that Applicants are not coming forward for participating and co-operating in the investigation and therefore they are seeking dismissal of the present Anticipatory Bail Application.

10. In my opinion for the aforesaid issue, custodial interrogation of the Applicants is not at all required. There are two reasons why I say so, one is because there are multiple FIRs filed against the Applicants by the Complainant with respect to the same cause of action in various Police Stations in the City of Mumbai. There is also a civil Suit

proceedings filed in Patna with respect to some civil issue wherein orders are passed *qua* the subject premises. However I would not like to deal with that issue as it would be best left to the parties to agitate that issue before the concerned Civil Court. Second reason is that participation of the Applicants in investigation is required. Applicants are directed to ensure that they hand over all the details of the rent receipts / licences *qua* their association with the subject property which was developed by them and which was agreed to be sold to the Complainant as also to show their association with the property as owners of the property and also answer the questions raised by the investigation *qua* the statement of the representative of the Company namely 'M/s. Jupiter Elevators' which has been recorded.

11. Any further investigation that is required to be done shall be done by the Investigating Officer and the Applicants shall participate and co-operate in the investigation. They are not merely required to attend the police station but also required to place on record all such necessary documentation pertaining to the investigation for the purpose of making the application to the Public Works Department, Government of Maharashtra of being confronted by the Investigating Officer of the documents in their custody as argued by the learned APP.

12. The observations made herein above are solely passed on the submissions made by the learned Advocates before me and the registration of the present crime and it shall not affect the investigation in the other FIRs which are filed as also the Civil Suit.

13. In view of the above *prima facie* observations, present Anticipatory Bail Application stands allowed in terms of prayer clause 'a'. Hence, the following order:-

ORDER

- (i) In the event of the arrest, Applicants be enlarged on bail on executing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;
- (ii) Applicants are directed to attend the investigation before the Investigating Officer from 20.01.2025 to 24.01.2025 between 10:00 a.m. to 03:00 p.m. everyday and thereafter as and when called for by the Investigating Officer;
- (iii) Applicants shall furnish particulars of their address and mobile numbers to the Investigating Officer within two days from today;
- (iv) Applicants shall not misuse their liberty in any manner or influence the informant, witnesses or any person

concerned with the case and they shall not tamper with the evidence;

- (v) It is directed that Applicants shall extend complete cooperation in the investigation of the instant case; and
- (vi) Any infraction of the conditions shall entail revocation of this order.

14. Parties to act on a server copy of this order.

15. Anticipatory Bail Application is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

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