

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.676 OF 2018

Pramod s/o Matthuji Manmode .Vs. State of Maharashtra, through PSO P.S.
Nandanwan, Nagpur.

WITH

CRIMINAL APPLICATION (ABA) NO.692 OF 2018

Pradip Gowardhanrao Raut and others .Vs. State of Maharashtra, through
PSO P.S. Nandanwan, Nagpur.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Shreerang P. Bhandarkar, Advocate for applicants.
Mr. S.S. Doifode, A.P.P. for non applicant-State.
Mr. Atul J. Pathak, Advocate for assist to prosecution.

CORAM : V. M. DESHPANDE, J.

DATED : OCTOBER 01, 2019

These two applications are disposed of by this common order since in both these applications the applicants are seeking pre-arrest bail in connection with Crime No.504/2018 registered with Police Station, Nandanwan, Nagpur for an offence punishable under Sections 420, 409 and 384 read with Section 34 of the Indian Penal Code and under Sections 3, 7, 8, 9, 10 and 13 of the Maharashtra Ownership of Flats Act, 1963.

Heard Mr. Bhandarkar, learned counsel for the applicants, Mr. Doifode, learned Additional Public Prosecutor for the non applicant-State and Mr. Pathak, learned counsel for the original complainant-Praful Karpe. After detailed hearing, following facts are emerging on record.

Nirma Ujwal Cooperative Society, Nagpur, of which the present applicants are the Directors, floated a scheme to construct various apartments in the year 2007. Accordingly, 700 tenements were constructed in the year 2007 itself. It is not at all disputed that those apartments were fully constructed apartments. The said apartments were then converted into *Nirmal Nagari Condominium* which is situated at Umred Road, Nagpur. The promoters of the said scheme also executed a registered Deed of Declaration with the competent authority.

It is also not disputed that apartments owners deposited amounts ranging between Rs.75,000/- to Rs.1,50,000/- towards one time maintenance. According to complainant, even electricity, infrastructure charges and water maintenance charges were also collected. The amounts so collected were invested in bank and the promoters are earning interests thereon.

It appears that the dispute started as to who will maintain the apartments. The complainant states that he is a President elected in an election in which the flat owners participated. The present applicants, it appears, are disputing the said election.

According to the complainant, the applicants are not maintaining the buildings.

In these two applications, this Court (Coram: Z.A. Haq, J.) passed an order on 12.10.2018 directing the applicants herein to deposit Rs.6,00,00,000/- in this Court and they were directed to be released on bail in the event of

their arrest by furnishing cash security of Rs.5,00,000/- with two solvent sureties for Rs.1,00,000/- for each of applicants.

Mr.Doifode, learned Additional Public Prosecutor for the State, on instructions from Mr.Hemantkumar Kharabe, Police Inspector (Economic Offences Wing), Nagpur, the investigating officer, who is personally present in the Court makes a solemn statement before this Court that all the applicants have joined the investigation. It is also statement of the investigating officer through learned Additional Public Prosecutor that all the applicants attended the investigating officer as and when they were directed to remain present before him and extended full cooperation. It is also the submission of the learned Additional Public Prosecutor that all the documents pertaining to this crime are already seized and are in possession of the investigating officer.

It is not case the case of any of the plot owners that in spite of the amount collected by the seller, they are not placed in possession. The only dispute is in respect of maintenance and that too who will maintain. There appears to be a serious dispute about election of the complainant as a President. In my view, District Deputy Registrar will be an appropriate authority. Section 5A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963, empowers the State Government to appoint an officer not below the rank of District Deputy Registrar of the Cooperative Societies, to be the competent authority.

Since all documents are in possession of the investigating officer and it is clear that the investigating officer does not require custodial presence of the present applicant, the interim order granted in favour of the applicants is required to be confirmed, especially when they have extended their full cooperation to investigating officer. At the same time, interests of flat owners can also be secured.

In view of above, I pass the following order :

ORDER

- (i) Criminal Application (ABA) No.676/2018 and Criminal Application (ABA) No.692/2018 are allowed.
- (ii) Applicant no.1- Pramod s/o Natthuji Manmode, applicant no.2-Wamanrao Sripatrao Bhalwatkar, applicant no.3-Satyandra s/o Raju Trivedi, applicant no.4-Vitthalrao M.Gawande, applicant no.5-Shivraj Vijaykumar Gujar, applicant no.6-Babanrao Pilaji Tidke, applicant no.7- Rashmi w/o Sanjay Thakare, applicant no.8-Savita Purushottam Bobade, applicant no.9-Dhananjay Balaji Dhakate and applicant no.10-Pratima w/o Rajkumar Khade in Criminal Application (ABA) No.676/2018 and applicant no.1-Pradip Gowardhanrao Raut, applicant no.2-Laxminarayan Durgadas Chandak, applicant no.3-Ghanshayam R. Gandhi and applicant no.4-Nareshchandra Sitaramji Lakhotiya in Criminal Application (ABA) No.692/2018, in the event of their arrest in connection with Crime No.504/2018 registered with Police Station, Nandanwan, Nagpur for an offence punishable under Sections 420, 409 and 384 read

with Section 34 of the Indian Penal Code and Sections 3, 7, 8, 9, 10 and 13 of the Maharashtra Ownership of Flats Act, 1963, be released on bail on they executing P.R. Bond in the sum of Rs.5,00,000/- each, with one solvent surety in the like amount by each of them.

(iii) After completion of the investigation the investigating officer shall file final report before the competent Court.

(iv) Registrar (Judicial) of this Court is directed transfer the amount so deposited before this Court, along with interest accrued thereon to District Deputy Registrar, Nagpur.

(v) The District Deputy Registrar, Nagpur is directed that after receipt of the said amount, carry out the work of maintenance of *Nirmal Nagari Condominium* after giving opportunity to both, the present complainant and/or any of the flat owner and the complainant either himself or a responsible officer appointed by him for a period of one year. In the meanwhile, he shall ensure that there is election of managing body of Condominium and after election he shall entrust work of maintenance to the said elected managing committee to see that the amount is utilized properly for maintenance of the building.

(vi) The District Deputy Registrar is directed to maintain accounts of expenditure for maintenance in accordance with law.

(vii) After the election by managing committee the District Deputy Registrar shall transfer balance amount in the name of *Nirmal Nagari Condominium*.

(viii) Since the investigating officer is not eager to retain the passports of the applicants deposited with him, the investigating officer shall handover the passports to the respective applicants.

(ix) The applications are disposed of.

JUDGE

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