

MHCC050068372022



IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI

ANTICIPATORY BAIL APPLICATION NO.2053 OF 2022
(CNR NO.MHCC05-006837-2022)

1. **Mr.Afzal Choudhary,**
Age: 40 years; Occ: Business,
Currently residing at Gomes
Compound, Behind Bakar Brother,
90 Feet Road, Near Pennisulla
Hostel, Sakinaka, Kurla (W),
Mumbai - 400 072.
2. **Mr.Sachin Kantilal Bhatt,**
Age: 47 years; Occ: Business,
Residing at A-202, Divya Darshan
CHS. Ltd., Sarojini Naidu Road,
Kandivali (W), Mumbai - 400 067.
3. **Mr.Nilesh Surendra Pookari,**
Age: 41 years; Occ: Business,
Residing at 702, Divine Paradise,
I.C.Colony Road No.2, Borivali (W),
Mumbai - 400 103.

...Applicants/Accused

V/s.

State of Maharashtra
(at the instance of Kandivali
police station).

...Respondents

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Ld. Advocate Abhishekh Sathe for the Applicants/ Accused.
Ld.APP Shri Panchpohar for the State.
Ld. Adv.Sachin Mahagaonkar for Intervener / owner.
Ld. Adv.Aniket Sharma for Intervener / informant.

CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE

SHRI N.L.KALE

(C.R.NO.14)

DATE : 11th January, 2023.

ORDER

This is an application u/s.438 of the Criminal Procedure Code 1973 filed by the applicants for seeking Anticipatory Bail in C.R.No.1408/2022, registered at Kandivali police station, for the offences punishable under sections 341, 427, 451, 452 r/w.34 of the Indian Penal Code, 1860.

Brief facts which gives rise to file the present application are as under: -

2. It is alleged that, complainant Raj Bhadreshwar is residing at Devi Bhawan Chawl, since last many years. It is a case of the informant that, Devi Bhawan Chawl is located in the premises of the compound of Shiv Mahal building. Said Shiv Mahal building in a dilapidated conditions, its redevelopment was under taken by one Shri Sachin Bhatt, Maitri Builders, who had sought to even redeveloped Devi Bhawan chawl. But, the residence of the said chawl had not given consent to Maitri Developers to redeveloped their chawl.

3. It is further alleged that, on 23/11/22 MCGM stuck notices on the doors of the houses of Devi Bhawan Chawl informing that, adjacent Shiv Mahal building is declared in C-1 category and had become

dangerous for habitation and hence, it was to be demolished. Hence, until the completion of the said demolition of Shiv Mahal building, the residence of Devi Bhawan chawl were instructed not to remain in the said chawl and to vacate their respective premises. Accordingly, the informant and the other occupants of Devi Bhawan Chawl, vacated their respective premises.

4. On 17/12/2022 at about 12:30 noon developer Shri Bhatt, Nilesh Poojary, and the officer of the BMC visited the said place and told to the residence of Devi Bhawan Chawl that, until the demolition of Shiv Mahal building was completed as a precaution they have to vacate, the place. Hence, as per the instruction the informant and other occupants, his neighbours locked the doors of their houses and went to the surrounding place.

5. It is alleged further that, at about 2:00 p.m., the demolition work was put to a halt as debris from the building being demolished were hitting the houses of Devi Bhawan Chawl and thereby causing damage to the rooms of Devi Bhawan Chawl. Then officers of BMC, police left the said place. Till that time, the houses, in Devi Bhawan Chawl were intact. At about 05:00 p.m., when the informant alongwith his family went to the said place, it was noticed that, their house also demolished and their kitchen is half demolished from the inside. So also, other rooms in said chawl were severely damaged and demolished. When, the residence of Devi Bhawan Chawl inquired with the Developer for the same, he gave evasive reply.

6. Thus, according to the informant, when the informant had locked the door of his house, the developer and their contractor (applicants) entered therein, illegally and broke the belongings and articles of the informant. The accused / applicants illegally demolished house of the informant by committing house trespass.

7. Thereafter, the informant lodged a report with Kandivali police station, on the basis of which the present crime is registered against the builder / Developers, contractor etc. After registration of the crime, police started investigation.

8. Now, by filing the present application, the applicants, who are builders / contractor seeking pre-arrest bail to them. According to the applicants, they have not committed any offence as alleged in a complaint. They further alleged that, a work of demolition of Shiv Mahal building was undertaken and started by the applicants, by obtaining necessary permissions from BMC and the said work was going on in presence of BMC officers etc.

9. They alleged further that, the damaged which is caused to the rooms situated in Devi Bhawan Chawl is not intentional or deliberate act at the instance of the applicants and a debris of an adjacent building which was being demolished was fallen down on those rooms. They further specifically alleged that, the applicants have not committed any house trespass in the house of informant and other occupants of the chawl. According to the applicants, a false crime is registered against them. They are ready to co-operate with the investigation process. They prays to allow

the prayer.

10. This application is strongly resisted by prosecution by filing reply vide Exh.2. According to prosecution, heavy damage is caused to many rooms situated in Devi Bhawan Chawl which was actually not the subject matter of demolition process / work. According to the prosecution, an instructions were given to the applicants and their persons, not to carry out the further demolition work but, without taking any necessary precautions, the applicants carried out a work of demolition of the said building. Prosecution alleged further that, police had stopped further demolition work of the said building. But, thereafter also, all the applicants infurtherance of their common intention demolished the rooms in Devi Bhawan Chawl with the help of JCB No.MH - 02 - FE 4586. Prosecution alleged further that, the applicants and their assistance illegally restrained the occupants of Devi Bhawan Chawl to enter in their premises. According to prosecution, other C.R.No.1434/2022 in respect of this incident is registered against the applicants on the basis of a complaint lodged by other occupants in that chawl. According to prosecution, for detail investigation custodial interrogation of the applicants is necessary. Prosecution prays to reject the prayer.

11. In this matter, the owner of chawl is appeared and he also resisted the prayers by filing written objection on his behalf. He supported the say of prosecution. He contended that, the applicants committed illegal house trespass, caused damage to the rooms of Devi Bhawan Chawl and had demolished those rooms, illegally. He prays to reject the prayer.

12. Original complainant / informant also strongly resisted the prayer by filing written objection on record. He also supported the case of prosecution. According to the complainant, the applicants deliberately and intentionally, committed a house trespass in their property and demolished their chawl, illegally.

13. Ld. advocate Shri Sathe appearing for the applicants submitted that, except offence under section 452 of IPC, other offences alleged are bailable in nature. He submitted further that, the applicants / accused are reputed businessmen and they have intentionally not committed any trespass or damage to the house of complainant and the occupants in Devi Bhawan Chawl. He submitted further that, the owner as well as informant of the said chawl is not having valid title regarding their legal possession on said premises. He relied upon notices issued by BMC to the occupants of the said chawl, consent given to Maitri Enterprises by Arvind Bhadreshwara, Ajit Dedhiya, Chetan Shah, Mahendra Dedhiya, Anitaben Mistry, Bhadresh Sanghani, Vinita Shah etc. He also relied upon IOD issued by BMC in the name of the applicants.

14. On the basis of the documents filed by the applicants, he submitted that, a grand father of the complainant had given consent for redevelopment project and there is sufficient documents to show that, Shiv Mahal Building is declared in C-1 category. He submitted further that, a work of demolition of Shiv Mahal building was carried out by the applicants by following a due process of law. According to him, as per the contents in FIR and prosecution story, a debris of the said building had fallen on the rooms of Devi Bhawan Chawls and hence, those rooms also

demolished / damaged. He submitted that, section 452 of IPC is not at all attracted to this case and investigation can be carried out without custodial interrogation of the accused / applicants. He submitted further that, police had recorded the statements of concerned witnesses and nothing is to be seized or recovered from the accused / applicants. He submitted that, the applicants are ready to co-operate with the investigation process.

15. Ld. APP submitted that, the occupants in a chawl were went to other place by putting a lock to their premises and as per the instruction of BMC. He submitted that, police authorities were asked the applicants / workers to stop further demolition work as some portion of said building was collapsed on the chawl. But inspite of the same, the applicants started further demolition work of said building, without taking any proper precautions. Hence, a damaged near about more than 32,00,000/- has been caused to the rooms of the said chawls. He submitted that, police wants to investigate which weapons were used and what precautions were taken by the applicants for said demolition work? According to him, custodial interrogation of the applicants is quite necessary for detail investigation.

16. Ld. advocates appearing for the owner of chawl and the complainants have filed their written objections and documents. Perused the same. They also supported the arguments put forth by Ld. APP. They submitted that, the applicants were having a grudge in their mind against all the occupants of Devi Bhawan Chawl and hence, they intentionally entered into the chawl and demolished its portion by means of JCB etc. They further submitted that, necessary precautions were not taken by the

applicants to demolish Shiv Mahal Building and the applicants illegally entered into the premises of the chawl and illegally demolished the same. They pray to reject the prayers.

17. It is admitted position that, there was no any permission granted to the applicants / accused to demolish the rooms situated in the chawl. According to the informant and prosecution, the applicants /accused illegally entered in chawl premises and they demolished portion of the said chawl, by using JCB. There are specific and clear contents in a complaint that, when, priorly some debris of Shiv Mahal Building was fallen on Chawl premises, the police authorities and the occupants of the Chawl informed the applicants not to conduct further demolition of the said building. There are further specific allegations that, the applicants carried out further demolition work without taking any precautionary measures. I.O. wants to investigate exactly which measures were taken by the applicants to protect the damage to the rooms of the Chawl.

18. In say of I.O. and in a complaint, there are specific allegations that, the applicants demolished the rooms in a chawl by using JCB. When, the applicants were not granted permission to demolish the chawl structure then why, they use JCB for its demolition. At present, say of I.O. and contents in FIR *prima facie* indicates that, the applicants have not taken precautionary measures to save rooms in the chawl from causing damage to it. Matter is at investigation stage. Hence, at present, it can not be said that, section 452 of IPC is not applicable to case in hand. For further detail investigation custodial interrogation of the applicants is quite necessary.

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19. In a result, considering the nature of offences, specific allegations made against the applicants and for aforesaid reasons, I am of the view that, the applicants have not made out a case to use discretion in their favour. Hence, this application deserves to be rejected. Hence, I proceeded to pass following order:

ORDER

Anticipatory Bail Application No.2053 of 2022 is rejected and disposed off accordingly.

(Order pronounced in open Court)

Date: 11.01.2023

(N.L.KALE)

**THE ADDL.SESIONS JUDGE
CITY CIVIL & SESSIONS COURT,
BORIVALI DIVISION, DINDOSHI**

Order direct dictated on computer on : 10.01.2023
Checked, corrected & Signed on : 11.01.2023

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“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE

Ms.M.M. Palav

(Stenographer Grade-I)

AND TIME : 11/01/2023 at 03.15 P.M.

NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri N. L. Kale (Court Room No.14)
Date of Pronouncement of Judgment/Order	11/01/2023
Judgment/Order signed by P.O. on	11/01/2023
Judgment/Order uploaded on	11/01/2023

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