

MHCC050018122021



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

**ANTICIPATORY BAIL APPLICATION NO.491 OF 2021**

Mrs. Nisha Taibun Shaikh  
W/o. Mr. Taibun Shaikh  
Age – 48 years, Occ.- Housewife,  
an Adult, Indian Inhabitant,  
Having address at Flat No.404,  
Building No.6-C, Shivaji Nagar CHS,  
Jogeshwari (East), Mumbai – 400 060 .....Applicant/Accused

V/s.

The State of Maharashtra  
(At the instance of Meghwadi Police Station, Mumbai)  
C.R.No.51/20 .....Respondent

Adv. Stepby Richards, the learned counsel for applicant/accused .  
APP. Smt. P. M. Chouhan, the learned counsel for the State.

**CORAM : H.H. Additional Sessions Judge,  
Shri S. S. Oza  
Court Room No.08.**

**Date : 22<sup>nd</sup> June, 2021**

**ORAL ORDER**

1. This is an application filed under section 438 of Code of Criminal Procedure 1973 ( hereinafter for sake of brevity referred as “Cr. P. C.) for grant of anticipatory bail to the applicant in C. R. No.51 of 2020 registered for an offence punishable u/sec.141, 142, 143, 149, 465, 467, 468, 471,452, 341, 120(B) r/w 34 of Indian Penal Code 1860( hereinafter for sake of brevity referred as I. P. C.).

2. Briefly stated, applicant's case is as under:-

She is permanent resident of Mumbai. She is apprehending her arrest in FIR No.51/2020. Anticipatory bail is already granted to four accused by this Court by passing order in Anticipatory Bail Application No.160/2020. She is innocent and falsely implicated in this case. The entire allegations are baseless. She is ready and willing to co-operate in the investigation. Hence, she prayed for grant of anticipatory bail to her.

3. Prosecution opposed the anticipatory bail application by filing the say at Ex.2. Prosecution mainly opposed the application on the ground that accused made an attempt to take illegal possession of the flat by breaking the lock constructed by first informant. The temporary possession of flat was taken by the applicant by preparing forged documents. Applicant did not produce the documents issued by the SRA. There is possibility of applicant again entered into the vacant flat. Therefore, investigation is necessary with the applicant. Hence, prosecution prayed for rejection of the application.

4. Heard the learned Counsel for applicant/accused and the learned APP for prosecution at length.

5. At the outset, it is to be noted that on 07.05.2021 this Court directed the applicant/accused to attend the concerned Police Station and submit the original temporary possession letter/document, if any, with the Investigating Officer. Prosecution filed the additional say at Ex.4 dated 31.05.2021 to the effect that as per the order of this Court, 14 accused person, whose names are

recorded in the FIR, produced the original possession letter and other documents with the Investigating Officer which were issued by one Sameer Sawant and Bharat Modi.

6. So far as the merits of the application is concerned, from the copy of FIR and say of the prosecution, it reveals that report has been lodged by one Shri Keval Vinodchandra Valbhiya, who is working as Vice President with Hub Town Ltd. And from the additional say of the prosecution, it reveals that during the investigation prosecution has prepared the detailed spot panchnama as well as recorded supplementary statement of first informant Keval Valbhiya. And while recording supplementary statement Shri Keval Vinodchandra Valbhiya stated that 18 hutment holders and others broken the lock of 27 rooms and forcibly took the possession of flats.

7. Furthermore, from the say of prosecution, it reveals that said alleged possession letter were issued by one Sameer Sawant and Bharat Modi on the letterhead of the said firm Hub Town Ltd and said Samir Sawant and Bharat Modi were working with the said firm. According to the prosecution case, the accused persons in furtherance of common intention with said Sameer Sawant & Bharat Modi got prepared the forged documents on the letterhead of said firm.

8. It is to be noted that according to the prosecution, said Sameer Sawant and Bharat Modi were working with the said firm and much more the alleged allotment letters were also issued on the letterhead of the said firm. It is to be noted that, from the say of the

prosecution it reveals that now said all rooms/flats are in the possession of the first informant. It is to be noted that the alleged forged possession letter are already produced by the applicant before the Investigating Officer.

9. Applicant has placed on record the copy of alleged document/agreement. And from said agreement, its reveals that said agreement was executed between the developer M/s. Aakruti Nirman Ltd., Prashant Ghanshyam Kulkarni being chief Promoter of proposed society of tenants named Shivaji Nagar Co-operative Housing Society Ltd. and the applicant/tenant/occupant. And said agreement contains covenant/ recitals that the tenants/occupants agreed that they will obtain the certificate of their eligibility from the concerned competent authority withing 90 days from the date of said agreement. Furthermore, they agreed that if said hutment dwellers / occupied tenants failed to obtain said eligibility certificate within 90 days then, this agreement shall be null and void automatically. It is to be noted that said agreement executed in the month of December, 2018. And the applicant/tenant, who failed to obtain eligibility certificate, said agreement automatically became null and void and original documents are already submitted by the applicant with the Investigating Officer.

10. Furthermore, said agreement bears the signature of one Sameer Sawant on behalf of M/s. Hub Town Pvt. Ltd. Admittedly said Sameer Sawant was working with M/s. Hub Town Pvt. Ltd. Even according to the prosecution, said Sameer Sawant executed letter on the letterhead of the M/s. Hub Town Pvt. Ltd. Thus, overall, to some extent matter is civil in nature. Applicant is ready

and willing to co-operate in the investigation. She has already submitted the alleged forged documents with the Investigating Officer. Therefore, in my humble view, no need of any custodial interrogation. No need to discuss the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 except to take note that this is a beneficial legislation for slum dweller and improvement of slum. It is sufficient to mention that applicant is a slum dweller even though "Non-Eligible" one.

11. In view of all these facts, this is a fit case to grant conditional anticipatory bail to the applicant. Hence, I proceed to pass the following order.

#### **ORDER**

- 1) Anticipatory Bail Application No.491 of 2021 is allowed.
- 2) Accordingly, in the event of arrest of applicant Mrs. Nisha Taibun Shaikh, she shall be released on anticipatory bail on executing P. R. and S.B. of Rs.20,000/- (Rupees Twenty Thousand) with solvent surety in the like amount on following conditions that-
  - i) She shall attend the concerned Police Station, on every Monday and Friday between 10 a.m. to 12 noon or whenever called by Investigation Officer by issuing notice in writing to the applicant, till filing of the charge-sheet.
  - ii) She shall not commit an offence similar to the offence of which she is accused, or suspected, of the commission of which she is suspected, or to instigate, provoke to others to commit such type of offence and
  - iii) She shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as

to dissuade her/him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

iv) She shall not leave India without the prior permission of this Court. v) If the applicant breach any of the above terms and conditions, the prosecution having liberty to apply before this Court for cancellation of bail of the applicant.

3) Anticipatory Bail Application No.491 of 2021 stands disposed of.

Dt.22.06.2021  
(S. S. Oza)  
Additional Sessions Judge,  
Borivali Div.,Dindoshi, Mumbai

Dictated on 22.06.2021  
Transcribed on 25.06.2021  
Signed on 28.06.2021

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

UPLOAD DATE  
AND TIME : 30/06/2021 1.20 p.m.      Mrs. T. S. Bhogte  
Name of Stenographer

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|-----------------------------------------|------------------------------------------|
| Name of the Judge (with Court Room No.) | HHJ Shri S. S. OZA<br>(Court Room No.08) |
| Date of Pronouncement of Judgment/Order | 22.06.2021                               |
| Judgment/Order signed by P.O. on        | 28.06.2021                               |
| Judgment/Order uploaded on              | 30.06.2021                               |