



**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
ANTICIPATORY BAIL APPLICATION NO. 415 OF 2021
IN
(C. R. No. 141 of 2021 of Kandivali Police Station)**

1) MR. VIRAL ATUL DAFTARY

Age 40 years, Occ.: Business Consultants
Indian Inhabitant, residing at 502,
Munisurat Apartment, Mathuradas Road,
Punjab National Bank, Kandivali (West),
Mumbai-67.

2) MR. SUNIL BHAGWAN JENA

Age 41 years, Occ.: Business Civil Contractor
Indian Inhabitant, residing at 602,
Building No.33, Shivali Building, Shanti Park,
Mira Road-East, Thane.

..Applicants.

V/s

**The State of Maharashtra (Through
Kandivali Police Station)**

..Respondent

Ld. Adv. Mr. Hardeep Singh, for the applicants.
Ld. APP Mrs. Usha Jadhav, for the State.

**CORAM : SHRI L.S. CHAVAN,
ADDITIONAL SESSIONS JUDGE,
COURT ROOM NO.10.**

DATE : 06th April, 2021

ORAL ORDER

This is an application filed by the applicants under Section
438 of the Code of Criminal Procedure 1973, for granting anticipatory

bail in connection with Crime No.141/2021 registered with Kandivali Police Station for the offence punishable under Sections 420, 336, 288 r/w 34 of the Indian Penal Code.

2. The factual matrix of the prosecution case is that, the complainant is a chairman of Priyadarshani CHS which is constructed in the year 1985. In August 2019, the MCGM had issued notice u/sec 353B of the MMC Act for Structural Audit of the society building. Accordingly, the society has carried the Structural Audit of the building through their Structural Engineer Mr. Deepak Kapadiya, wherein the Audit Report classified the building as C-2-A category (major repair). Thereafter, the office bearer of the society conducted the meeting for repair of the building and started searching Civil Contractor in their budget. In January 2020, the applicant no.1 was ready to repair building of society. He had given quotation of Rs. 15 lakhs which was accepted by the society. On 30.01.2020, the applicants nos. 1 and 2 and Mr. Manoj Pal came to society building that time, the office bearer of the society had issued cheque of Rs.2 lakhs in the name of S.K. Enterprises Company to the applicant no.1.

3. Thereafter, on 02.02.2020 at 10.30 am, after hearing hammering sound from terrace, the complainant and Mr. Pratik went on terrace and seen that, two labour were hammering on water tank without any support to the water tank. Due to that, water were coming from the part of water tank. The complainant asked them to stop the work that time, Mr. Manoj Supervisor of the applicant no.2 informed him that he has no instruction from the applicants to give support to the water tank. At that time, the Bimb of water tank broken and some part of water tank collapsed down in Flat Nos.13 & 14. All the water in the

tank were spread into all the flats of the building and some house articles were damaged. It is alleged that on 03.02.2020, the applicant nos. 1 and 2 were agreed to repair and renovate their society building free of cost and also ready to pay damages. Thereafter, they demanded Rs. 48 lakhs from the society for completing repairs of building which was denied by the society members and asked the applicants to repair the building free of cost. The applicants avoided to repair the building. Therefore, the complainant lodged the report to Kandivali Police Station against the applicants. On the basis of report of the complainant, Crime No. 141/2021 came to be registered against them for the offence punishable under Sections 420, 336, 288 r/w 34 of the Indian Penal Code.

4. The learned advocate for the applicants argued that, the applicants are innocent persons. they have been falsely implicated in the abovesaid crime by the complainant. The dispute between complainant and applicant no.2 is based on contract of repair work which is civil nature. Nothing is to be recovered from them. Their custodial interrogation is unwarranted. Hence, requested for granting pre-arrest bail to them.

5. Per contra, the learned APP for the respondent strongly opposed for granting anticipatory bail contending that, the applicants have taken of Rs. 2 lakhs as a advance of repair work of the building. While, repairing the building they negligently broken water tank and caused damages to the Flat Nos. 13 & 14. The gravity of offence is serious. The investigation is in progress. The custodial interrogation of the applicants is required for recovery of amount of Rs.2 lakhs. Hence, requested for rejecting the application.

6. In view of the rival submission of both the sides and on perusal of FIR, it is seen that the society building is more than 35 years old. As per the Structural Audit Report, the society building is classified as C2A category. Further, it is seen that, the repair work of the building was allotted to the applicants. While carrying the repairs works, the water tank of the terrace was broken and collapsed in Flat Nos. 13 & 14. Due to which, all the water in the tank spread into all the flats and some articles were damaged. As per the contention of the APP, the applicants had not taken the care while repairing work of the building and caused damages to the building including the house articles. But, the said act of the applicants is negligent or not is the matter of trial. Therefore, at this stage, it would not be proper to arrive any conclusion in that respect. Further, it is seen that the entire dispute between complainant and applicant no.2 is based upon the contract of repair work and it is of civil nature. Nothing is to be recovered from the applicants. Therefore, their custodial interrogation is unwarranted. They have made out the prima facie case to grant the anticipatory bail. Therefore, they are entitled to grant the anticipatory bail. They are ready to abide any condition imposed by the court while enlarging them on pre arrest bail. Hence, I pass following order.

ORDER

1. Anticipatory Bail Application No. 415 of 2021 is hereby allowed.
2. In the event of arrest of the applicants namely 1) **MR. VIRAL ATUL DAFTARY** 2) **MR. SUNIL BHAGWAN JENA**, be released on bail on executing P.R. Bond of Rs. 25,000/- (Twenty Five Thousand only) each with one or two sureties of like sum in connection with Crime No.141/2021 registered with Kandivali Police Station for the offence punishable under Sections 420,

336, 288 r/w 34 of the Indian Penal Code on the following conditions-

- i) They shall attend the Kandivali Police Station on every Sunday from 10.00 am to 1.00 pm and shall make themselves available for interrogation by the police as and when required till filing of the chargesheet.
 - ii) They shall not tamper with the prosecution evidence.
 - iii) They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade them from disclosing such a fact to the court or to any police officer.
 - iv) They are is directed to furnish their local address and contact numbers to Kandivali Police Station.
 - v) Inform to Kandivali Police Station.
3. Anticipatory Bail Application No. 415 of 2021 stands disposed of accordingly.

Sd/-

(L.S. CHAVAN)

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dt. 06/04/2021

Dictated on : 06/04/2021
Transcribed on : 06/04/2021
Signed by HHJ on : 06/04/2021

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

07/04/2021 at 04.00 pm.

Mrs. J.S. Gawai

UPLOAD DATE AND TIME

NAME OF STENOGRAPHER

Name of Judge (with Court room no.)	HHJ Shri L.S. Chavan, City Civil & Sessions Court, Borivali Div., Dindoshi. (C.R.No.10)
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Date of Pronouncement of JUDGEMENT/ORDER	06/04/2021
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JUDGEMENT/ORDER signed by P.O. on	06/04/2021
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JUDGEMENT/ORDER uploaded on	07/04/2021
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