

MHCC050065982022



**IN THE COURT OF SESSIONS, BORIVALI DIVISION,
DINDOSHI, GOREGAON, MUMBAI.**

ANTICIPATORY BAIL APPLICATION NO.1970 OF 2022

1. Mahendrakumar Ghisulal Shah
Aged 57 years, Occ: Business,
Indian Inhabitant, Residing at
1101/1201, Kumar Sophorania Building,
Allastair Road, Byculla East,
Mumbai 400 027

 2. Satish Raghuna Patil
Aged 55 years, Occ: Business,
Residing at A/174, Park Plaza,
New Yari Road, Versova,
Andheri West, Mumbai 400 061
- ...Applicants

Versus

The State of Maharashtra
(Meghwadi Police Station, Mumbai
in CR No. 700 of 2022)

...Respondent

Shri Vaibhav Jagtap, Advocate for applicants.

Shri Ambekar, Addl. PP for the State/respondents.

Shri Satish Agarwal, Advocate for Intervener.

Coram: His Honour Additional Sessions Judge
Shridhar M. Bhosale
(C.R.No.1)

Date : 23rd December, 2022.

ORDER

1. This is an application under Section 438 of Code of Criminal Procedure (hereinafter referred as "Cr. P. C.") for anticipatory bail on apprehension of his arrest in connection with C.R.No.700 of 2022 registered at Police Station, Meghwadi for the offences under Section 420, 406 r/w 34 of Indian Penal Code (hereinafter referred as 'IPC') & under Sections 13 and 14 of the Maharashtra Ownership Flats Act 1963 (hereinafter referred as MOFA) on the report of Mohandas Shinna Shetty.

2. In short, the informant a hotelier by profession, was in search of residential premises. He through a reference came to know that applicants are in process of developing building in the nearby area in the year 2008 or thereabout where the intervener was residing. It is alleged that the applicants induced the informant and eight other flat buyers to get their willingness and readiness to visit the site where the building was purportedly going to be developed. Hence, informant alongwith eight other persons interested to buy flats visited the site and they have booked flats and paid approximately Rs.4,43,85,000/-. After the receipt of booking amount from the informant and other eight persons applicants had issued allotment letters as per the date mentioned on the respective letters of allotment. Informant and others have made payment of Rs.4,43,85,000/- by cash and cheques. Applicant No.2 also executed an MOU with

informant and other eight persons during 2014 to reconfirmed the said payment made by informant and other eight persons. However, despite of giving assurances from time to time to give the possession of flats, applicants failed to deliver and have not even commenced with the construction. The applicants also failed to execute any sale agreements with informant and other buyers. On these counts, it is alleged that applicants have cheated the informant and others and misappropriated their amounts. Hence report came to be lodged.

3. Prosecution has filed say and resisted the application.

4. Heard Ld.Advocate Shri Vaibhav Jagtap for applicants, Ld.Advocate Shri Satish Agarwal for the informant/intervener and Ld.Addl. PP Shri Ambekar for the State. Also perused the reply filed by intervener alongwith the documents. Perused the investigation papers.

5. Ld.Advocate for the applicants-accused vehemently submitted that, the matter is of civil dispute and there was no any intention of cheating. He submitted that there was delay of project only because of some of the tenements have raised the disputes. It is submitted that M/s.Shanti and Santosh Builders have constructed rehab building No.1 and allotted 139 tenements to eligible slum dwellers. They have also constructed rehab building No.2 and allotted 231 tenements to eligible slum dwellers. Thus, out of 821 members, 543 members have been rehabilitated. It is contended that the delay of construction of four rehab buildings was due to laxity on the part of MHADA who has still not

demolished existing three hutments and failed to abide by the order passed by the High Court and other Competent authorities from time to time. It is submitted that the builder had already obtained necessary permissions for construction of four rehab buildings.

6. It is submitted that the transaction is of 2008 with the informant and the complaint is lodged after 13 years. Thus, there is delay which has not been explained. He submitted that already a proceeding is filed before State Consumer Redressal Forum, but thereafter again the present complaint came to be filed and thus, it is nothing but Forum shopping which has to be curtailed. It is submitted that by filing multiple complaints the informant is misusing the process of law and using pressure tactics to settle the matter on their terms. In support of his arguments, he placed reliance in case of Vijaykumar Ghai and Others V/s State of West Bengal and others, (2022) 7 SCC 124.

7. It is further submitted that the informant and others are mere investors and it was disclosed to them that no plans or formalities were completed with the slum dwellers. It is further submitted that the informant has no intention to purchase a flat in SRA. It is submitted that the case is based upon the documents and nothing is to be recovered. It is further submitted that the applicants are ready to deposit the amounts. Therefore, this court can on condition of deposit can grant relief of anticipatory bail in the circumstances there is no any antecedents or applicants are likely to abscond. In support of his arguments, he placed reliance in judgment dated 19.3.2021 in Spl. Leave to Appeal(Cri)

No.1274/2021 in case Manoj Kumar Sood and anr V/s State of Jharkhand.

8. It is further submitted that on consideration of over all material and the allegations with the fact that already informant and others have availed the civil remedy by filing petition before State Consumer Forum, proper to grant anticipatory bail. In support of his arguments, he placed reliance in judgment dated 19.1.2021 in Criminal Appeal No.53/2021 in case of Dilip Singh V/s State of Madhya Pradesh and anr.

9. Per contra, Ld.Addl.PP vehemently submitted that the applicants were well aware that they are not likely to construct the building and despite of it not only issued the allotment letters in the year 2008 by accepting the earnest amount, but again in 2014 executed MOU and confirmed about acceptance of more than Rs.4 crores from informant and others. It is vehemently submitted that it is applicant No.2 who has accepted the amount and disclosing that it is deposited/invested with Shanti and Safal Builders. it is vehemently submitted by Ld.Addl.PP that no any constructed has been yet started on the said plot of land.

10. Ld. Advocate for the informant-intervener submitted that, the offence is serious and being a economical offence wherein the amount involved is approximately Rs.4,43,85,000/- not fit case to grant anticipatory bail. It is submitted that almost 14 years since the informant and other flat buyers have made payment for consideration of flats to applicants, they have not even commenced the construction work. It is

submitted that there are many other flat buyers who have invested their saving to purchase flats in the same building, but they were not also provided with flats and thus, they have been cheated. It is contended that still the construction has not commenced nor the applicants have refunded the amount.

11. I have given thoughtful consideration to the submissions of all the parties. There is no dispute about issuance of allotment letters and acceptance of the amount. The main contention of applicants is that only because of the laxity on the part of MHADA to get vacate the tenements, the four rehab building was not started. According to his submission, there were four rehab buildings to be constructed and one sale component building in which informant has booked the flat. it is submitted that though there was no any fault on applicants' part the MOU was terminated and in 2021 the new developer came to be appointed. According to him, under the coercion the MOU was got signed. But a willingness is shown by applicants to deposit the amount or in alternative to handover the flats. It has been tried to bring discrepancies from the statements of informant and others about discrepancy in amounts taken. Though there is some discrepancy appears in respect of payment of cash, but the fact remains that the amount was accepted and the allotment letter was issued.

12. On consideration of documents produced by applicants, it could be seen that plan was approved on 21.2.2007 wherein there was also a sale component. In respect of rehab component, it could be seen that there were 821 tenements to whom the builder/developer has to

accommodate. Further subsequently SRA authority has issued a proposed LOI dated 20.6.2022. As per the said LOI dated 20.6.2022, the plan of rehab building 1, 2 and 3 was approved and some of the tenements were rehabilitated in building No.1 and 2 whereas rehab building No.3, there is no work on site. Further though the approval was granted to sale building No.1 on 29.7.2008, but no work was yet started on the site and there was no any plan yet approved for sale building No.2. This LOI dated 20.6.2022 was issued in the name of M/s. Green Zone Realtors Pvt.Ltd. Thus, it could be seen that though since 2007 no any work has been carried out, but from time to time on assurance of providing a flat, amount of Rs.4,43,85,000/- were accepted from informant and others and even MOU was executed by applicant No.2 confirming the said amount.

13. No doubt, from the face of the record one may say that it is a nature of civil dispute. But, considering the fact that though plan was sanctioned in the year 2008 for sale component of building No.1 and plinth CC was granted on 24.10.2008, till date no any progress is made in respect said building and further even not a plan was get sanctioned for sale building No.2. Thus, from the material it could be gathered that there was intention on part of applicants since inception to cheat the informant and others and therefore, they have deceived them to take the amount from time to time on assurance of giving flats. Hence, considering the amount involved, the modus operendi adopted, in my considered opinion, it is necessary to give fair opportunity of investigation for which custodial interrogation is necessary. Hence, I pass following order:

ORDER

Anticipatory Bail Application No.1970 of 2022 is hereby rejected and disposed off accordingly.

23.12.2022 (Sridhar M. Bhosale)
Addl. Sessions Judge
Sessions Court,
Dindoshi, Mumbai.

Date of dictation : 23.12.2022
Date of transcription by steno : 23.12.2022
Signed on : 23.12.2022

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

23.12.2022 at 6.05 p.m. UPLOAD DATE AND TIME	Mrs.S.A.Kapare Stenographer(Grade-I) NAME OF STENOGRAPHER
Name of the Judge (With Court Room No.)	H.H. 1 st A.P.J. Shridhar M. Bhosale Court Room No.1
Date of pronouncement of Judgment/Order	23.12.2022
Judgment/Order signed by P.O. on	23.12.2022
Judgment/Order uploaded on	23.12.2022