

MHCC050062502022



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

ANTICIPATORY BAIL APPLICATION NO.1874 OF 2022
IN
C.R.NO.731 OF 2022

1.ROBERT MATHEW DSOUZA,

Aged : 64 years, adult, Indian Inhabitant,

2.SANTAN ROBERT DSOUZA,

Aged : 66 years, adult, Indian Inhabitant,

Both are residing at : Premashray Nandan
Satpada, Post- Agashi, Vasai,
Dist-Palghar, Maharashtra.

3.VICTOR LOBO,

Aged 56 years, adult, Indian Inhabitant,
Residing at : RH1, Prithvi Palace,
Kandarpada police Chowky, Link Road,
Dahisar (West), Mumbai

...Applicants/accused.

V e r s u s

**The State of Maharashtra
(MHB Colony Police Station)**

...Respondent.

Shri Punit Shukla, Advocate for the Applicants/accused.
The Complainant Adv Mallika Ingle in person.
Shri Sachin Jadhav, A.P.P for the State.

**CORAM : A.Z.KHAN,
Additional Sessions Judge,
Borivali Division, Dindoshi, Mumbai.
(C.R.NO.09)
Dt.09th December, 2022.**

ORDER

1. The present application is filed by the applicants/accused for the Anticipatory Bail. Perused the application and say thereon vide Exhs.3 & 5. Heard the learned advocate Shri Punit Shukla for the applicants/accused, the Complainant Adv Mallika Ingle in person & the learned A.P.P Shri Sachin Jadhav for the State. I have gone through the case papers, say of the police, reply of the intervener Exh.6 and the documents. It is seen that the present applicants/accused alleged to have been committed the offences punishable u/s 420 & 406 r/w 34 of The Indian Penal Code alongwith 13 of the MOFA Act in C.R No.731 of 2022 wherein the offence is registered in MHB Colony Police Station, Mumbai.

2. It is pertinent to note here that the report lodged by the complainant namely Mallika Ajay Ingale along with the statements of the witnesses and the documents filed by the parties on record etc clearly shows that the present applicants/accused are the developer and they have partnership firm M/s Pitarsa Realtors Firm and started to construct the building namely Gaodevi Krupa at Exsar Gaon, Borivali Taluka, Mumbai in the year 2014 & started to book the flats from the customers wherein the complainant approached to the applicants-accused and booked her flat.

3. Moreover, the report clearly shows that the present applicants/accused received the amount Rs.79,92,500/- towards the sale of the said flat to the complainant and agreed to handover the possession of the said flat after the construction in the year 2018 but the present applicant/accused neither completed the said building nor handover the flat to the complainant as agreed and failed to repay the said amount alongwith the interest as agreed. Per contra, the present applicants/accused took the loan from the Bank of Baroda wherein he failed to pay the said loan and thus the Bank of Baroda took the possession of the said building being the defaulters of the payment of the loan. Therefore, the complainant lodged the report in which the police investigated the matter and recorded the statements of the witnesses.

4. Obviously, the report, statements of the witnesses and the documents filed by the parties on record clearly shows that the present applicants/accused are the developers and they have a partnership firm M/s Pitarsa Realtors Firm and started to construct the building namely Gaodevi Krupa in the year 2014 & started to book flats from the customers wherein the complainant approached to the applicants/-accused and booked her flat in the said building and paid the amount of Rs.79,92,500/- to the present applicants/accused wherein the present applicants/accused agreed to construct the said building and handover the said flat to the complainant in the year 2018 otherwise present applicants/accused would repay the said amount of Rs.79,92,500/- alongwith the interest @ 18% but the present applicants/accused failed to construct the said building and handover the possession of the flat to

the complainant as well as failed to repay the huge amount to the complainant as agreed alongwith the interest.

5. Per contra, the documents clearly shows that the present applicants/accused deliberately took the loan amount of Rs.4,00,00,000/- from the Bank of Baroda by mortgaging the said property & easily handedover the said building project to the Bank of Baroda and stopped the construction despite the huge amount not only the complainant but also the other customers are taken by the present applicants/accused under the pretext of the said building which itself shows that the present applicants/accused were having intention from the very inception of the starting of the said project to cheat not only to the complainant but also to the other customers dishonestly.

6. No doubt, the offence is serious and several aspect involved in the present case. The court has to see the criminal mentality of the present applicants/accused in seems to be of the civil in nature whereby the custodial interrogation of the present applicants/accused is indeed essential otherwise the right to interrogate the present applicants/accused by the investigation Officer would be taken away which would certainly affect the case of the prosecution & ultimately the case of the complainant on merit.

7. In such circumstances, I am of the view that this is not the fit case in which the applicants/accused can be released on anticipatory bail u/s 438 of The Cr.P.C & thus I proceed to pass the following order.

ORDER

The application is hereby rejected.

(A.Z.Khan)

Additional Session Judge,
Borivali Div, Dindoshi,
Mumbai.

Date :- 09.12.2022.

Dictated on : 09.12.2022.

Transcribed on : 09.12.2022.

Checked and Signed on : 09.12.2022.

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

09.12.2022 at 06.00 P.M.
UPLOAD DATE AND TIME

Ashok S. Sugdare
NAME OF STENOGRAPHER

Name of the Judge (With Court room no.)	SHRI. A. Z. KHAN (C.R. NO.09)
Date of Pronouncement of JUDGMENT/ ORDER	09.12.2022
JUDGMENT/ORDER signed by P.O. on	09.12.2022
JUDGMENT/ORDER uploaded on	09.12.2022