

Order below Exh.1 in Cri. Bail Application No. 45/2022

Abhijeet @ Rajesh Anandilal Varma .. Applicant/
Accused.

Vs.

The State of Maharashtra
through Police Inspector,
Panchawati Police Station, Nashik.
(Cr. No.I 373/2021) .. Prosecution

Order below Exh.1.

1. This application has been filed by the applicant/accused under section **438 of Cr.P.C.** for releasing him on **anticipatory bail** in the event of his arrest in the aforesaid Crime registered at Panchawati Police Station, for the offence punishable under section 406, 420, 421, 427 of IPC, u/s. 13 of MOFA Act and Section 3 of the MPID Act. He was protected by interim Order dated 11.01.2022.

2. The brief facts of the case is that applicant is a builder by profession, he is doing construction business in partnership under the name and style **“Om Constructions and Infrastructures”** located at Nasik. In the year 2015, the applicant has launched a project named as **“Oms Premraj Enclave”** consisting of 90 flats. The complainant has booked one 3 BHK flat bearing No. 209 for total consideration of Rs.48,00,000/- and an agreement to that effect was

executed on 11.04.2017. The complainant has paid in all Rs.24,32,000/- towards part payment. The applicant assured to complete the project within the period of 24 months. Despite expiry of the said period, the applicant failed to handover the possession of the said flat to the complainant. The complainant repeatedly approached the said applicant with the request to complete the project or to refund the amount. But applicant didn't pay any heed. Left with no option, he approached the Police, but no action was taken by the Police. So, he filed private complaint with the prayer under section 156(3) of Cr.P.C. for registration of the FIR. My predecessor passed an order for registration of the FIR under sections 406, 420, 421, 427 of IPC, u/s. 13 of MOFA Act and Section 3 of the MPID Act. Accordingly, crime bearing CR No.373/2021 was registered against the applicant.

3. The applicant is apprehending arrest at the hands of the Police and so approached this court for protection. The learned counsel Mr. A. J. Bhide and Mr. Mutha appearing for the applicant/accused have argued that the applicant is innocent and has not committed any offence. He has no intention to cheat the complainant. He has completed all legal formalities to start the construction work. Unfortunately, due to financial paucity, the construction couldn't be completed. He has invested 2.5 Crores in the said Project and has completed foundation, campus and retaining wall etc. It is purely a civil dispute arising out of contractual relationship and it cannot be converted into criminal offence. All the documents relating to the transaction are with the investigating agency and as such nothing remains to be recovered from the applicant and as such, there is no need of his custodial interrogation. Lastly, he prayed for

confirmation of the interim protection granted to him on 11.01.2022.

In support of their contentions, the ld. Counsels have relied on the cases reported in **Anand Kumar Mohatta Vs. State**, AIR 2019, Supreme Court 210 and **Dilip Singh Vs. State of Madhya Pradesh**, 2021 ALL SCR (Cri) 2116.

4. The investigating Officer appeared and filed his reply vide Exh.6 and strongly opposed the application on the ground that they need custody of the applicant to recover the amount and also to find out how many victims have invested their money in the Project. They wanted to seize all documents relating to the Project. The offence is serious in nature, involves public money and is related to financial irregularities. It needs detail interrogation. Hence, prayed for rejection of the application.

The ld. APP Smt. R.Y.Jadhav has strongly opposed the application vide her reply Exh.7 stating that offence is serious and he is not entitled to be released on bail. His custodial interrogation is necessary. The investigation is at initial stage. Hence, prayed for rejection of the bail.

The original complainant appeared through his ld. Counsel and strongly opposed the application by filing his say vide Exh.11. It was contended that applicant has not initiated the construction work and has cheated him. He is neither giving flat nor money to him. He has misappropriated his entire amount. He has cheated many people. He has filed photographs of the site on record to show the status of the construction. He prayed for rejection of the

application. In support of his contentions, the ld. Counsel for complainant has relied on the reported rulings in the case of **Central Bureau of Investigation Vs. Ramendu Chattopadhyay**, LAWS(SC)-2010-11-63 and **The State of Bihar Vs. Amit Kumar @ Bacha Rai**, LAWS(SC)-2017-4-84.

5. After going through the case diary, arguments of both the sides, prima facie it appears that complainant has booked one flat with the applicant/ accused on 11.04.2017 for total consideration of Rs.48,00,000/- and paid Rs.24,32,000/-. The applicant agreed to handover the possession of flat within the period of 24 months. The complainant has filed recent pictures of the site on record which shows construction of few pillars only. There appears no possibility of further construction. It is almost 5 years, the applicant has neither shown any substantial construction nor return the amount of the complainant. Prima facie the applicant's intention appears to be dishonest, he has allured the complainant by offering flat but failed to handover the same within stipulated period for what so ever reasons. He has thus, cheated the complainant. The learned counsel has stated that he has invested Rs. 2.5 Crores for construction work till date but pics on record speaks otherwise. Only few Pillars are seen. Further, the FIR was registered for cheating and forgery under IPC, Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act and Maharashtra Protection of Interest of Depositors Act, which is no doubt serious offence and needs custodial interrogation of the applicant.

As regards the cited authorities are concerned, facts in those cases are entirely different and not in any way similar to the

case in hand. It was held in those authorities that when the dispute is civil in nature, the Court should deprecate and discourage the prosecution of criminal offence. But in the instant case it is not so, the contention of learned counsel that complainant is trying to give color of offence despite being civil dispute is not correct. Looking to the growing trend of Cheating cases by builders more specifically low income or middle class people who invest their hard earned savings or by taking huge loans, are becoming victims of stalled Projects. In the instant case, the custodial interrogation is required to find out how many buyers/victims have invested in his project, how much amount was duped by the applicant etc. Hence, I am not inclined to grant any protection to the applicant. Following order is passed.

Order

- 1/- Application stands rejected.
- 2/- The interim protection granted to applicant on 11.01.2022 stands vacated.
- 3/- Inform concerned police station accordingly.

(**Smt. S.S. Nair**)

Date : 28.01.2022.

Addl. Sessions Judge-4, Nashik.