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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.877 OF 2015
WITH
CRIMINAL APPLICATION NO.555 OF 2015

Upkar Singh Anand ... Applicant
Vs
The State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.585 OF 2015
WITH
CRIMINAL APPLICATION NO.475 OF 2015

Abdul Sameer Abdul Gaffar Shaikh ... Applicant
Vs
The Senior Inspector of Police and Anr. ... Respondents

Mr.Ashish S. Chavan, for the Applicant in ABA No.877 of 2015.

Mr.Jehangir M. Khajotia, for the Applicant in Cr.Appln.No.555 of 2015

Mr.Shoaib I. Memon, for the Applicant in ABA No.585 of 2015.

Mr.S.H.Yadav, APP for the Respondent – State.

P.I – Alaknure, Khar Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 20th AUGUST, 2015

P.C. :

1. Heard learned counsel for the Applicants, learned APP for the Respondent – State and the learned counsel for the intervener.

2. By these Applications, the Applicants seek pre-arrest bail, in connection with C.R. No.450 of 2015, registered with the Khar Police Station, Mumbai, for the alleged offences punishable under Sections 420 r/w 34 of the Indian Penal Code and under Sections 4, 8 and 13 of the Maharashtra Ownership Flat Act, 1963.

3. The present applicants are admittedly the employees of Hicons Developers Private Limited (for short 'the said Company'), and the other accused are the Directors of the said Company.

4. According to the complainant, she had entered into an agreement with the said Company on 27th July, 2011. The said allotment letter was signed by the complainant and one of the Directors of the the said Company i.e. by Mr.Khalid Vasaiwala, as the Director of the said Company. According to the complainant she had purchased a flat being Flat No.1201

on the 12th Floor in a proposed building known as 'Hicon Twilight' for a consideration of Rs.2,15,00,000/-. In the said allotment letter it was mutually agreed between the parties that an amount of Rs.60,00,000/- would be paid as Earnest Money Deposit and the balance consideration of Rs.1,55,00,000/- would be paid in installments as per the schedule which was annexed to the said allotment letter. It was agreed that the possession of the aforesaid flat would be handed over prior to the last installment. Clause – 2 of the said allotment letter reads thus :-

> "2. You shall, in the same format as shall be executed with other purchases/allotees before taking possession, execute a printed agreement for sale (hereinafter referred to as "The Said Agreement") being executed with other purchases/allotees of Flat as and when required by us. Further, provisions of the Said Agreement will be treated as provided herein and the Said Agreement shall always be read and constructed together with this letter of allotment and provisions contained therein shall be applicable and binding to you over and above the provisions of this letter of allotment. The Said Agreement has been perused and approved by you and the same will prevail upon this letter of allotment."

5. According to the complainant although the total consideration of the flat was agreed at 3,35,00,000/- in the allotment letter the amount mentioned was Rs.2,15,00,000/-. She has alleged in her complaint, that pursuant to the same, she had given a cheque of Rs.60,00,000/- and cash of Rs.1,20,00,000/- to Khalid Vasaiwala, the Director of the Company. The complainant has alleged that Khalid Vasaiwala asked her to give the cash amount to his employees who were present there i.e. the present applicants and a receipt was accordingly issued by the applicant Abdul Samerer Abdul Gaffar Shaikh for the same and that according to the schedule Rs.1,55,00,000/-, was to be paid. On 30th September, 2011, out of the said sum of Rs.1,55,00,000/-, again a cheque of Rs.15,00,000/- was given and receipt was issued for the said amount. The complainant has alleged that thereafter whenever she asked Khalid about the progress of the flat, initially he said that the construction was in progress and later started giving evasive answers, pursuant to which she lodged an FIR on 30th September, 2011.

6. Learned Counsel for the Applicant in both the aforesaid applications submitted that the applicants were the employees of the said

Company. The said fact that they were the employees of the said company is not disputed either by learned APP or by the learned counsel appearing for the intervener. The only contention of the learned counsel for the Intervener and the learned APP is that the applicants were present at the time when cash payment was made and that one of the applicant i.e. Abdul Samerer Abdul Gaffar Shaikh in Criminal Anticipatory Bail Application No.585 had signed the receipt of payment. It is not in dispute that the Director of Hicons Developers Private Limited i.e. Khalid Vasaiwala was arrested and subsequently enlarged on bail after 3 days. It is also not in dispute that the said order enlarging the co-accused – Khalid on bail was challenged by the complainant in Revision in the Sessions Court. It is not in dispute that the said application seeking cancellation of bail granted to co-accused – Khalid was rejected by the Sessions Court. It is also not in dispute that the complainant challenged the said order before the High Court and the same was withdrawn. As far as the other co-accused are concerned i.e. Directors of Hicons Developers Private Limited, all the four Directors have been granted pre-arrest bail.

7. From the perusal of the FIR it appears, that the complainant

had approached the co-accused - Khalid who was the Director of Hicons Developers Private Limited as she was in search of a flat. It is alleged in the said FIR that Khalid had disclosed to her the consideration that would be payable for purchase of the flat. It is also stated that co-accused - Khalid informed her, that the flat would be sold at a lesser price than the market rate, if the said amount was paid in cash. It is further stated by the complainant that she accepted the said proposal and accordingly an amount of Rs.1,20,00,000/- was paid in cash and a cheque of Rs.60,00,000/- was given by cheque, in the presence of a broker Harshad Parekh. It is further alleged that the present applicant i.e. Abdul Samerer Abdul Gaffar Shaikh issued a receipt of payment at the behest of co-accused - Khalid. It is further alleged that on 27th July, 2011 she visited the office of Hicons Developers Private Limited along with her husband, son and broker and at that time all the Directors including the applicants were present there. She has stated that inspite of making the aforesaid payments she was not granted possession of the flat and hence the aforesaid complaint was lodged by her.

8. Learned Counsel for the Applicants submitted that the

applicants were only the employees of the Hicons Developers Private Limited and the actual transaction was between the Directors of the said Company and the complainant. He submitted that only Abdul Samerer Abdul Gaffar Shaikh had issued a receipt at the behest of the Director – Khalid.

9. From the perusal of the FIR, it prima-facie appears that the inducement was done by co-accused - Khalid and at his behest the flat was allotted and the amounts were paid by the complainant. The letter of allotment is also signed by the complainant and co-accused - Khalid. Merely because the applicants who were the employees of the said Company, were present when the amount was paid, cannot be ground to say that they were also responsible for inducing the clients to make payments. Prima-facie, it is doubtful, that mere presence at the time of negotiations and at the time when cash payment was made, provision of Section 420 of the Indian Penal Code would be attracted.

10. Considering the peculiar facts of the case, the applicants deserve to be granted anticipatory bail on the following terms and

conditions :-

ORDER

i) In the event of arrest, the Applicants be enlarged on bail on furnishing P.R.Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount ;

ii) The Applicant shall attend the Khar Police Station, Mumbai, on first Saturday of every month, between 10.00 a.m. to 11.00 a.m., till the filing of the charge-sheet ;

iii) The Applicants shall not leave India, without the permission of the Trial Court ;

iv) The Applicants shall not tamper or attempt to influence the complainant or any persons concerned with the case.

11. The Application is allowed and disposed off in above terms.

12. It is made clear, that the observations made herein are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

13. In view of the order passed in Criminal Anticipatory Bail

Application Nos.877 of 2015 and 585 of 2015, nothing survives for consideration in Criminal Application Nos.555 and 475 of 2015. The same are also disposed of.

14. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.