

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1750 OF 2016

Sominath S/o Deorao Hiwale,
Age : 39 years, Occu.: Agriculture
R/o Eknath Niwas, Old Ranjangaon
Shenpunji, Taluka and District
Aurangabad .. Applicant

Vs.

The State of Maharashtra
Through MIDC Waluj Police Station,
Aurangabad .. Respondent

.....

Mr. S.S. Thombre, Advocate for the applicant
Mr. M.B. Bharaswadkar, APP for the respondent-State
Mr. S.S. Varma, Advocate for assist to A.P.P.

.....

CORAM : M.T. JOSHI, J.
DATED : 31/03/2016

ORAL ORDER :

Heard both sides.

2. The present applicant, who is arrested by MIDC Waluj Police Station, Dist. Aurangabad in Crime no. 571 of 2015 for the offences punishable under section 406, 420 r/w. 34 of the Indian Penal Code, is praying for his release on bail.

3. Copy of the complaint would show that one Moraya Associates had started developing a row house project at Ranjangaon. According to the complainant, he came to know that the present applicant – Sominath Hiwale is the owner of the land and the same was given to co-accused – Yogesh Jagdale for developing the same. Catalogues were given to him. He agreed to purchase one row house for the price of Rs.6 Lakhs. An amount of Rs.1,51,000/- was deposited with co-accused Yogesh Jagdale. Agreement was also executed by said Yogesh Jagdale. Some other persons also made the similar booking, however, the work was not completed. On the other hand, certain construction was even demolished and the co-accused Yogesh Jagdale told the applicant that since CIDCO has not approved the plan, there would be no construction and he has already paid an amount of Rs.25 Lakhs to the present applicant. In view of these facts, the complaint came to be filed.

4. Mr. Thombre, learned counsel for the applicant

submits that the applicant was arrested on 24/02/2016. In-fact, he is also cheated by the co-accused. Agreements were admittedly executed by the co-accused. Merely, the land was given for development to the said co-accused by the applicant. Therefore, the applicant himself is the victim of the acts of the developer. He further candidly submits that an amount of Rs.25 Lakhs only is received by the applicant and the substantive principal cost of the land is entangled in view of this dispute. In the circumstances, he submits that the applicant may be released on bail.

5. Learned A.P.P.P. as well as learned counsel assisting the A.P.P. opposed the application. It was submitted that the brochure that was supplied to the customers contained the mobile number of the present applicant. Further, not only the complainant but all the other buyers are also cheated. Present applicant has admittedly received an amount of Rs.25 Lakhs. In the circumstances, he submits that the application be dismissed.

6. During hearing, Mr. Thombre made an offer to deposit an amount of Rs.1,50,000/- in the Court and also agreed that the complainant may withdraw the said amount, upon furnishing bank guarantee and subject to the final decision in the criminal case, that may be filed in the Court of the learned J.M.F.C.

7. Upon hearing both sides, in my view, the investigation is practically complete. Considering the role of the present applicant in the entire episode and finding that the trial would take its own time, the applicant can very well be released on bail on the following terms and conditions.

8. Hence, the following order:-

I) The Application is allowed.

II) The applicant be released on bail in Crime no.571 of 2015 registered with MIDC Waluj Police Station, Dist. Aurangabad for the offences punishable under section 406, 420 r/w. 34 of the Indian Penal

Code, upon his executing P.R. bond in the sum of Rs.20,000/- (Rs. Twenty Thousand) and also upon furnishing surety in the like amount.

III) Upon his release, the applicant is directed to deposit an amount of Rs.1,50,000/- (Rs. One Lakh Fifty Thousand) in this Court within a period of two (2) weeks from the date of his release.

IV) The complainant would be at liberty to withdraw the said amount, upon furnishing bank guarantee. The order regarding the said amount shall be subject to the final order that may be passed by the concerned trial Court.

V) Withdrawal of the amount, if any, by the complainant shall be without prejudice to his right, claim or interest.

9. Application is accordingly disposed of.

Sd/-
[M.T. JOSHI]
JUDGE

arp/-