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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**ANTICIPATORY BAIL APPLICATION NO.732 OF 2016**

Anil Dattatrey Nanaware ..Applicant.  
V/s.  
State of Maharashtra and Ors. ..Respondents.

Mr. Mateen Shaikh with Shrinavas Khirsagar for the applicant.

Ms.Veera Shinde, APP for respondent-State.

**CORAM : A.M.BADAR, J.**

**DATED : 9TH JUNE, 2016**

**P.C. :-**

1. The applicant / accused in Crime No.I-I35/2016 for offence punishable under section 420 of the Indian Penal Code, 1860 and under section 4(1), 13(1) of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 registered with police station Khandeshwar Police Station, Navi Mumbai at the instance of the informant Ganesh Yelkar is praying for pre-arrest bail.

2. Heard learned counsel appearing for the applicant.

By taking me through the averments in the F.I.R., he argued that after getting booking as a builder he started constructions of apartment and had spent an amount of Rs.5.95 crores in construction. He submitted that when the construction of the apartments was going on, CIDCO issued a notice under Maharashtra Regional Town Planning Act and, therefore, the construction was required to be stopped. He argued that the applicant had filed Writ Petition No.1978 of 2015 and the Division Bench of this Court has disposed of the said petition on 10<sup>th</sup> March, 2015 by directing the applicant to seek regularization. According to the learned counsel for the applicant, subsequently the New Mumbai Airport Development Authority was created and, therefore, the applicant was not in a position to complete the construction. According to the learned counsel for the applicant all necessary permissions such as permission from the Gram Panchayat, permission from the Airport Authority and no objection from electricity department were obtained by the applicant and, therefore, it cannot be said that the applicant had cheated the informant or other purchasers.

3. As against this, by pointing out the order of the

Division Bench of this Court in Writ Petition No.1978 of 2015, the learned APP argued that the applicant has not applied for regularization within a period of one month as directed and during the course of investigation, the Investigation Officer has received information to that effect from CIDCO. The learned APP further argued that the applicant had cheated 69 purchasers of apartment thereby misappropriating huge amounts.

4. Perused the papers of investigation made available as well as the F.I.R.

5. Informant Ganesh Yelkar came across an advertisement issued by the applicant for sale of apartment under the name and style of "Sai Enterprises Builder and Developers". He then approached the applicant Anil Nanaware and Chandrakatn Waghmare. According to the prosecution case, the applicant and his associate informed the informant that they are constructing apartments in the name and style as "Parth Residency" and induced the informant to book one apartment. Accordingly, the informant booked one apartment by paying Rs.2.50 lakhs. It was agreed to give possession

within a period of 15 months.

6. According to the prosecution case, no construction of the building as proposed was made and the construction of the building was never completed. Construction was completely abandoned in June, 2015. Not only that the present applicant was not traceable thereafter and the staff members used to give evasive replies to the informant.

7. According to the prosecution case, in such a manner not only the informant but 69 other persons have been cheated by the present applicant by inducing them to deposit money on the pretext of booking apartments.

8. The learned counsel for the applicants argued that he is willing to refund the amounts to the persons who have booked the apartments. However, such willingness at this stage is not of any relevance.

9. For starting developments on the hand one is required to seek permission of the appropriate authority under the Maharashtra Regional Town Planning Act. In the case in

hand, it is seen that the applicant had not obtained permission from the authorities as envisaged under the Maharashtra Regional Town Planning Act. As such, the Planning Authority under CIDCO had issued notice i.e. section 54(1) to the applicant and it was on the pretext so called construction was stopped by him.

10. It is seen from the order of the Division Bench of this Court in Writ Petition No.1978 of 2015 that the applicant was directed to apply for regularization within a period of one month from the date of order with a rider that on failure, the protection granted shall cease to apply. During the course of investigation, the investigating officer has received information from CIDCO that even subsequently, no permission for development is granted to the applicant.

11. It is seen that several purchasers are affected by the act of cheating by the applicant. Without having any valid permission for development, it is seen from the papers of investigation that the applicant had induced the public at large to part with monies for booking apartment and thereby collected huge amounts. The offence has serious

repercussions on society as well as public at large. The applicant had breached the trust reposed on him by his customers. Prima facie, it is seen that the applicant has dishonestly induced persons to book apartments when in fact, he was not having valid authority or permission to develop. The applicant thereby secured huge amounts from the public at large which he now offers to repay that is a totally independent matter. This Court has noticed several such instances of cheating by builders. The offence alleged is serious in nature affecting the society.

12. Considering the nature of offence and involvement of the interest of large number of public, preference cannot be granted to the personal liberty of the applicant. That apart custodial interrogation of the applicant is also necessary. Hence the order:-

The application is rejected.

**(A.M.BADAR, J.)**