

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.938 OF 2015

Shri Vinay Kedia	... Applicant
Vs.	
The State of Maharashtra	... Respondent

WITH
CRIMINAL APPLICATION NO.693 OF 2015
IN
ANTICIPATORY BAIL APPLICATION NO.938 OF 2015

Maruti Rayappa Sannaki	... Applicant/Intervener
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IN THE MATTER BETWEEN

Shri Vinay Kedia	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr.H.H. Ponda, Sr.Advocate a/w Bhavesh Thakur i/b Rahul Arote for the Applicant
Ms.S.S. Kaushik, APP, for Respondent – State
Mr.S.R. Pawar for Intervener

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **MARCH 14, 2016**

P.C.:

1. The Anticipatory Bail Application is moved for pre-arrest bail as the applicant-accused is prosecuted for the offences punishable under section 420 of the Indian Penal Code in C.R. No.271 of 2015 registered at the instance of the intervener Maruti Rayappa on 29.5.2015 with Naupada police station, Thane. It is the case of the complainant that the daughter of the applicant-accused has booked flat No.603 in one Hill View building,

which is constructed by a Builder / Developer M/s.Prescon Realtors & Infrastructure Pvt. Ltd. The total consideration of the said building was Rs.62,05,960/- and approximately an amount of Rs.26 lacs is paid to the Developer till the date of filing of the complaint. However, in January 2015, the Builder demanded more amount of Rs.1,500/- per sq.ft and approximately Rs.21,52,000/- was charged more. It is the case of the prosecution that for 3 years, the construction did not proceed only because of the Builder. The building was earlier 21 storied, however, the builder was trying to get permission for 26 storied building from the Thane Municipal Corporation and, therefore, because of this, delay was caused and thus, he was charged more money and hence, the complaint was filed.

2. The learned Counsel for the Applicant has submitted that the applicant-accused is a Director of the company. He submitted that from the beginning, the building was shown as 26 storied and as per the agreement, as there was a delay, the flat purchasers have agreed that they would pay more money or interest on the said amount. He submitted that he is ready to go for registration. However, there is no charge under MOFA so also registration charges were not paid by the complainant. According to the learned Senior Counsel, the permission was given in 2012 by the Corporation for additional four floors. He denied that the

builder is at fault. The learned Counsel submitted that the applicant is on pre-arrest bail and he has attended the police station from time to time. He further submitted that he has furnished all the documents and prayed that the interim bail be confirmed.

3. Learned Prosecutor and the learned Counsel for the complainant have opposed the application and submitted that earlier there was a promise of 22 storied building. However, the Builder tried to construct additional four floors and, therefore, the construction was delayed. The builder is entirely at fault for the delay and he is charging 24% interest on the same. It is further submitted that right from the beginning, it is a case of cheating and the demand made by the Builder is illegal and hence, his custody is required.

4. I have perused the documents, the FIR and also the brochure. It appears from the record and the orders passed by my predecessor, the matter was referred to mediator, however, as per the report of the learned Mediator, the mediation has failed. It is a fact that the complainant and some other 10 persons have paid nearly 40% of the amount of total consideration. The booking was made in the year 2010 and still, though it was to be constructed within two years, as per the instructions to the learned Senior Counsel, the building is now ready with all 26 floors. On

perusal of the documents, it appears that earlier the building was shown as ground plus 19 storeys and subsequently, the builder wanted to construct additional floors and hence, the construction was at standstill. However, this material is not sufficient to deny pre-arrest bail to the applicant-accused as still, he is ready to give possession of the flats at escalated price. However, the complainant's claim is that the Builder cannot demand the escalated price as he is at fault, as earlier, the permission was given only upto 20 storeys.

5. Under these circumstances, I grant the Anticipatory Bail Application on the following terms and conditions:

- i) In the event of arrest, the applicant-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/- with one or two solvent sureties in the like amount;
- ii) The applicant-accused shall not tamper with the evidence or pressurise the complainant;
- iii) The applicant-accused shall not indulge into any criminal activity;
- iv) The applicant-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent

address to the Investigating Officer alongwith documentary proof of his address.

v) The applicant shall cooperate with the Investigating Officer and attend the concerned police station every Thursday between 11am and 12 noon, for three months from today.

vi) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

6. Application for intervention stands disposed of.

(MRIDULA BHATKAR, J.)