IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1353 OF 2015
WITH
CRIMINAL APPLICATION NO.298 OF 2016

WITH
ANTICIPATORY BAIL APPLICATION NO.1354 OF 2015
WITH
CRIMINAL APPLICATION NO.299 OF 2016

WITH
ANTICIPATORY BAIL APPLICATION NO.1355 OF 2015
WITH
CRIMINAL APPLICATION NO.300 OF 2016

Sanghmitra Sushil Kandalgaonkar ... Applicant
vs.
The State of Maharashtra and Another ... Respondents

Mr. Naveen Chomal, for the Applicant.
Mrs. P.P. Shinde, APP for Respondent – State.
Ms. Priyadarshani Birje, for Respondent No. 2 in ABA. No. 1353 of 2015.
Mr. Ashok Mishra a/w. Ms. Radha Shah i/b. Solicis Lex for Respondent No. 2 in ABA. No. 13547 of 2015.

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

DATE: **3rd MAY, 2016**

P.C.:

. All the three applications are filed by one and the same applicant/accused as three offences are registered against her which are of the similar nature but filed by three different persons. However, the nature of the transactions are same, submissions of both parties are common and therefore the applications are heard together and decided by a common order.

In A.B.A. No. 1353 of 2015 :

2. The application is moved for pre arrest bail as the applicant/accused is facing charges for the offences punishable under Sections 420 and 406 read with 34 of the Indian Penal Code in C.R. No. 160 of 2015 registered with Amboli police station. The offence is registered at the instance of one Rani Talreja on 12th May, 2015.

3. It is the case of the complainant that in the year 2012 she was residing in Dubai. She was in search of a flat in Mumbai. At that time, she acquainted with the applicant/accused Sanghmitra Kandalgaonkar who told her that in Andheri area some flats are available. It is her case that, since 22nd June, 2012 she and her husband issued two cheques of Rs. 5 lacs and thereafter paid Rs. 27 lacs by issuing three cheques. Thereafter, the applicant/accused gave a letter of provisional booking of flat No. B/202, D/301-301, Remeebiz Court, Shah Industrial Estate, Veera Desai Road,

Andheri(w), Mumbai signed by her. Thereafter in August, 2012 the complainant along with her husband came to Mumbai and met with the applicant/accused at her office A and A Shelter Private Limited. At that time, the applicant/accused showed them one place named Krupasagar Co-Op. Hsg. Society. Thereafter, the applicant/accused executed the agreement of two flats and also issued receipts in favour of the complainant. A promise was given by the Director Mr. Abhishek Vyas of A and A Shelter Private Limited who is the co-accused in this case. However, till lodging of the first information report, they found that there was no construction started. The complainant issued notice dated 8th November, 2015 for return of the amount against the accused. In December, 2014 they had one meeting alongwith their counsel with co-accused Abhishek Vyas and one Vishal Dattani. The complainant and her husband demanded return of money i.e. Rs. 1,47,00,000/-. Therefore, in the meeting, the applicant/accused and the co-accused gave nine cheques including the amount of compensation worth Rs. 2,59,87,945/-. However, all the cheques were bounced and hence the complaint was lodged under Section 138 of Negotiable Instruments Act. Thereafter, the case was registered against the applicant/accused.

In A.B.A. No. 1354 of 2015 :

4. The application is moved for pre arrest bail as the applicant/accused is facing charges for the offences punishable under Sections 420, 406 and 506 read with 34 of the Indian Penal Code in C.R. No. 99 of 2015 registered with Amboli police station, Mumbai. The offence is registered at the instance of one Rahul Jain on 24^{th} March, 2015.

5. It is the case of the complainant that he wanted to buy a flat in Mumbai and therefore he collected Rs. 75 lacs by selling his father's property at Indore. Through Internet, he got information about the redevelopment of some building. Therefore, he met with one person i.e. agent who took him to one A/A Ritika Better Home Private Limited and A & A Shelter Private Limited, A/301/302, B/202, Remi Basecourt, Plot No. 9, Shah Industrial Estate, Veera Desai Road, Andheri(w), Mumbai. At that time, they met with the applicant/accused. She introduced herself as a Director of A/A Ritika Better Home Private Limited and Sales Director of A & A Shelter Private Limited. As per the information given by her, the complainant booked two flats in Shivneri Co-Op. Hsg. Society, Goregaon and one

flat at Krupasagar Co-Op. Hsg. Society. He gave cheque of Rs. 48,75,000/- to the applicant/accused for Krupasagar society and Rs. 24,37,500/- for the booking of two flats in Shivneri society. Thus, in total the amount of Rs. 73.125 lacs is given to the applicant/accused till 20th March, 2013. He received a letter of allotment for two flats on 8th May, 2013. However, as per the date mentioned in schedule of M.O.U., the flats should be ready till 31st December, 2014. However, the flats were not ready and there was no construction going on. Therefore, he contacted the applicant/accused but she handed over cheque of Rs. 73.125 lacs to the complainant. Thereafter, again when he went to the office of the co-accused Vishal Dattani, he gave him cheque of Rs. 90 lacs. However, all the cheques were bounced. It is his case that he was also received threats of kidnapping from the applicant/accused. Therefore, finally he lodged the complaint.

<u>In A.B.A. No. 1355 of 2015 :</u>

6. The application is moved for pre arrest bail as the applicant/accused is facing charges for the offences punishable under Sections 420 and 406 read with 34 of the Indian Penal Code in C.R. No. 211 of 2015 registered with Amboli police station, Mumbai. The

offence is registered at the instance of one Jatin Mer on 17th July, 2015.

7. It is the case of the prosecution that the complainant was in search of a flat and he found one developer from the website mumbaicityroperty.com. So he contacted Mr. Harjapsingh and Ms. Priya Ghaktode. They took him to the office of A/A Ritika Better Home Private Limited and A & A Shelter Private Limited. There he was introduced with the applicant/accused and co-accused Abhishek Vyas. They told him that the flat is available in Shivneri Co-Op. Hsg. Society, Goregaon. So he booked a flat with them and he gave total Rs. 20 lacs since 3rd April, 2013 to 26th June, 2013. The applicant/accused and the co-accused Vyas executed a document in favour of the applicant/accused and promised that he would get possession of the flat within 18 months. However, the work did not commence even after 18 months. Therefore, he asked the applicant/accused and at that time, she gave four post dated cheques of Rs. 30 lacs but all the cheques are bounced for want of insufficient funds. Therefore this complaint is lodged.

8. The learned counsel for the applicant/accused submitted that the applicant/accused was a marketing Director of the company and not a Director. The cheques were not issued by with her signature. She is innocent. He submitted that as per the case of the prosecution, Rs. 7 Crores were transferred by R.T.G.S. from the account of the company to the personal account of the applicant/accused. The applicant/accused has deposited Rs. 7 lacs in the Court. He submitted that the co-accused are also ready to deposit the amounts paid by the complainants. Under such circumstances as the applicant/accused is cooperating the police machinery and attending the police station, she being a woman, the pre arrest bail may be granted to her.

9. The learned prosecutor and the learned counsel appearing on behalf of the complainants opposed the applications. They submitted that the applicant/accused was a Director of A/A Ritika Better Home Private Limited and A & A Shelter Private Limited. The money was paid by all the three complainants in the name of the company. The applicant/accused is the beneficiary of the amounts. The learned prosecutor further submitted the husband of the

applicant/accused is also in the construction business and police found that during a period from 2012 to 2013 total amount of Rs. 3.54 Crores were transferred from the account of A & A Shelter Private Limited company to one S. Kinlay company. The applicant /accused is the beneficiary of the money. So also all the cheques issued by the applicant/accused are bounced. Therefore, the custody of the applicant/accused is very much required.

10. Perused the first information reports and other documents. Heard the submissions of both the parties. This is a case where the flat purchasers are promised to give possession of the flats and money was collected. The flats were not given within the stipulated period. In this case, admittedly money is paid to the companies by the complainants where the active role of the applicant/accused is mentioned in their respective first information reports. To file a suit for specific performance is one of the option available to the complainants in the Civil Court for recovery of money. However, it is not only a failure to perform the contract but also the applicant/accused and the co-accused issued cheques to all the three complainants towards repayment and all the cheques were bounced

for want of insufficient funds. It shows that the applicant/accused is not interested in repaying the amount to the complainants but they wanted to cheat the complainants and enjoy the wrongful gain of money received from the complainants. To avail the alternate remedy of Civil action is available to the complainants but then again the complainants have to suffer expenses of heavy Court fees. However, at this stage, *prima facie* the case of cheating is made out. Therefore, I am not inclined to grant pre arrest bail to the applicant/accused.

11. Hence, all the three anticipatory bail applications stand rejected and accordingly disposed of. In view of this, all the criminal applications are also disposed of.

(MRIDULA BHATKAR, J.)