

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1595 OF 2016

Ramesh Gulab Chaudhari

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Akhilesh S. Dubey a/w Mr. Rahul Sharma a/w
Mr. Paritosh Shukla i/b Law Counsellors Advocate for Applicant.
Mr. S. S. Pednekar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : SEPTEMBER 28, 2016.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 81 of 2016 registered at Khandeshwar police station for offence punishable under section 420 r/w 34 of the Indian Penal Code.

2) It is the case of the prosecution that one Shivaji Desai (First informant) was to purchase a flat in the project which was named as Balaji Residency and was to be undertaken on land on land survey no. 99/4/B at Panvel. He had paid the substantial amount of 20%. The project itself had not commenced.

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After waiting for a long time, he even sought for refund of the amount. The directors of the company would neither allot a flat nor refund the amount. Hence, he was constrained to file the F.I.R. It appears that the company M/s Tirupati Balaji Builders and Developers Private Limited was registered under the Companies Act, 1956. Mahendra Singh and his wife Rinku Singh were the directors of the said company as shown in the memorandum of association.

3) The learned counsel for the applicant submits that the applicant was in fact, an employee of the company and was drawing a salary, however, he was inducted as a director and hence, he was a director of the said company. However, the company was being run by the husband and wife and he was not concerned with it. According to the learned counsel for the applicant, he is not the beneficiary of the scheme. He has not received any amount in his account. It is further submitted that the applicant had resigned from the said company on 01/07/2015. Mahendra Singh and his wife are taken into custody and are in custody. In the course of investigation, it is revealed that the company i.e. Balaji Builders had sold flats to 1290 persons. That investigation is in progress.

4) The learned APP has placed the papers of investigation on record which

shows that Mahendra Singh was either the proprietor, director etc of about 12 companies. The investigating officer had inquired with the office of Registrar of the Companies in respect of the status of the applicant with the company which shows that he was appointed on 04/06/2012 and ceased to be a director on 01/07/2015. The learned APP submits that the period of offence is from 2014 to 24/04/2016. The papers of investigation would further reveal that on 02/10/2014, a flat was sold to one Anil Karandikar. The receipt of Rs. 2,65,800/- was issued by the present applicant in the capacity of the director of the company.

5) It is in these circumstances, it cannot be simplicitor said that applicant has no concern with the affairs of the company. The papers of investigation would further reveal that in fact, no application was made for seeking permission of the construction of the said scheme to the CIDCO Authorities. The Talathi of Saja Asudgaon has further replied to the investigating officer that the office has not received any application or any documents in respect of the construction and development of Tirupati Balaji Builders. The land on which the proposed scheme was to be constructed is also not in the name of the company nor there is any development agreement.

6) The learned counsel for the applicant submits that it is true that the said land belonged to Vijaykumar Jain and the company was in the process of purchasing the said land and in the meanwhile the F.I.R. was lodged and the directors of the company were taken into the custody.

7) This court cannot be oblivious of the fact that even before having a better title of the said land, the proposed scheme was advertised and the flats were sold. It would simply mean that the purchasers were also misled and had no idea that the land does not stand in the name of the developer nor there was a development agreement between the owner and the company. Applicant claims to be an estate agent and an employee of the company and the work allotted to him was that he was to sell the flats to the proposed customers. It was incumbent upon the applicant to at least address the customers on the point that the land does not stand in the name of the company. The consumers of the said project have been put into a panic position since they had no idea that the entire project was never to come up, however, the builders/developers of the company and the applicant have utilized the money of the persons who had booked the said flats and hence, it is clear that an offence of cheating is completed.

8) At the initial stage itself, applicants never had an intention to construct the flats or sell the same, neither the land was in their name, no application was filed seeking permission for construction nor there was any development agreement. Hence, applicant does not deserve discretionary relief in the form of pre-arrest bail as custodial interrogation of the applicant would be imperative. However, it is made clear that observations made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

9) Application, being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)