

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1757 OF 2015

Mustafa Firoz Tinwala	...Applicant
V/s.	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPLICATION NO.76 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO.1757 OF 2015**

Durga Pradeep Kale & Ors.	...Intervenors
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IN THE MATTER BETWEEN

Mustafa Firoz Tinwala	...Applicant
V/s.	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPLICATION NO.835 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO.1757 OF 2015**

Mrs.Srushti Sujit More	...Intervenor
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IN THE MATTER BETWEEN

Mustafa Firoz Tinwala	...Applicant
V/s.	
The State of Maharashtra	...Respondent

Mr.N.P. Dalvi for the Applicant.

Ms.Radhika Mehta for the Intervenor in Application No.76 of 2016.

Ms.Ujwala Sawant for Intervenor in Application No.835 of 2016.

Ms.S.S. Kaushik, APP for Respondent-State.

Mr.B.P. Malgaonkar for Respondent No.2.

CORAM : N. W. SAMBRE, J.

DATE : 28th NOVEMBER, 2016.

P.C.

1. The applicant is seeking pre arrest bail in Crime No.370 of 2015 registered with RAK Marg Police Station for the offences punishable under Sections 420, 406 read with 34 of the Indian Penal Code and Section 4, 5 and 13 of the Maharashtra Ownership of Flats Act.

2. The substance of the allegation as per the prosecution story against the applicant is the applicant is being partner of the builder firm who has entered into an agreement for sale of Commercial/Residential apartments with the complainants and the intervenors though accepted consideration has not provided the possession till date.

3. In the above referred background while trying to make

out the case for grant of pre arrest bail. Shri. Dalvi learned counsel for the applicant submits that the applicant, who is a student and young entrepreneur cannot be held responsible for the act of other active partners of the firm responsible for the defaults of the other active partners of the firm. He would submit that though the parties i.e. complainant and applicant along with other partner has arrived at the settlement, however, it is only because of non-fulfillment of the payment/consideration as were agreed to by the intervenor or the customers the possession of the property was not handover. According to him the applicants father who is the Managing partner was already arrested, subjected to interrogation and he is already released. The applicant who was under the protection of this Court since last more than one year and very much available for investigation if required for prosecution. As such he needs to be protected.

4. Per contra the learned APP while strenuously opposing the application submits that as per the Courts order of protection the applicant has not honoured the undertaking given to this Court. Apart from above it is submitted that the fact remains that the complainants have parted with the consideration. However, the applicant being partner has practice fraud, accepted the amount in

cash and cheque and not parted with the possession in a lawful manner in favour of the complainants.

5. The learned APP is assisted by the counsel for the complainant and the intervenor.

6. Perused the papers as are available on the record. The applicant appears to be under ad-interim protection of this Court from 20th November 2015. On 08th March 2016 an undertaking is given that the applicant along with his father who are partners will settle the claim. However, the fact remains that till date the claims are not settled. Whatever what is tried to be canvassed before this Court is balance consideration is yet to be received.

7. I hardly see any material to that effect on record to infer such as per contention of the applicant, as the applicant enjoyed protection on an undertaking given to this Court. In which he has accepted his liability to hand over the possession within a period of four months. Even after eight months the applicant has not moved an inch ahead to honour the undertaking given before this Court or to the complainants.

8. The papers which reflect the investigation carried out till date demonstrate that the applicant was one of the person who has accepted the consideration being partner that too in cash or in cheque. The material prime-facie depicts the involvement of the applicant to the crime in question, the offence being economic is required to give seriously investigated. As such application such fails rejected.

(N. W. SAMBRE, J.)