

Nalawade

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.267 OF 2017
Hiraji Banaji Shah and anr vs. The State of Maharashtra
WITH

ABA NO.410 OF 2017
Manoj J. Shah vs. The State of Maharashtra

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Niranjan Munderggi with Mandakini Bhangale, Ahmed Shakur i/by R.D.Suryawanshi for the Applicants.

Ms.Veera Shinde, APP for the State.

Mr.Ashutosh R. Gole for the Applicant in ABA No.410/2017.

Mr.Girish Bhalchim, PSI Naya Nagar, Thane CR.

CORAM :A.S.GADKARI, J.

DATE : 10th April, 2017

P.C.

The applicants are apprehending arrest in CR NO.I-19/2016 dated 20.1.12017 registered with Naya Nagar Police Station, Thane under Section 420 read with 34 of the Indian Penal Code.

2) The first information report is lodged by Sachin Kunkerkar. It is alleged that the applicants in ABA No.267/2017 are being the builders/developers agreed to sell the flats constructed on the said project however, the applicants failed to adhere to perform their part of

obligation and despite receipt of amount of Rs.1,97,97,375/- from 20-persons, the applicants did not handover the possession of the respective flats to the said flat purchasers.

3) The applicant in ABA No.410/2017 is an independent estate agent and the allegation against him is that, through him some of the flat purchasers have booked flats in the project/building constructed by the applicants in ABA No.267/2017.

4) The learned counsel for the applicants in ABA No.267/2017 had submitted an affidavit cum undertaking to this Court dated 20.2.2017 thereby accepting the liability to sell 20 flats to the flat purchasers mentioned in the first information report. They had also given undertakings to comply with the necessary legal obligations. The said affidavit cum undertaking was taken on record and the said fact is recorded in order dated 1.3.2017. Today, Mr. Mundergi, the learned counsel appearing for the applicants has tendered consent terms executed between the applicants in ABA No.267/2017 as one part and the complainant Shri. Sachin Kunkerkar and 19 other persons who are also named in the first information report on the other part, who have also signed the said consent terms. Mr. Mundergi on instruction from the applicants has made a statement that the terms and conditions mentioned in the consent terms are clearly applicable to the other 19 persons also and the applicants

therein shall comply their-part of obligations as mentioned in the consent terms with respect to the said other 19 persons whose names are mentioned in the FIR also. The said statement is accepted. In view of the amicable settlement between the complainant and the other affected flat purchasers on one side and the applicants in ABA No.267/20178 on the other side, the applicants have made out a case for their release on pre arrest bail.

5) The interim relief granted by an order dated 1.3.2017 is hereby confirmed. It is made abundantly clear that if the applicants in ABA No.267/2017 fails to honour any of the conditions and undertakings given to this Court firstly by their affidavit cum undertaking dated 20.2.2017 and secondly by way of consent terms dated 10.4.2017 the prosecution or any of the affected persons mentioned in the first information report are at liberty to file an application for cancellation of bail.

6) Application No.267 of 2017 is allowed in the aforesaid terms.

7) As stated earlier, the applicant in ABA No.410/2017 has only acted as an agent in contracting some of the affected person mentioned in the FIR and the applicants in ABA No.267/2017 and has no major role to play in the present crime. That, in view of the consent terms filed by the applicants in ABA No.267/2017, the applicant in ABA No.410/2017 deserves to be protected by pre-arrest bail. The interim relief granted by an order

dated 1.3.2017 in favour of the applicant Manoj Shah is confirmed. ABA No.410/2017 is allowed accordingly.

8) However, the directions to attend the concerned police station given in both the applications by this Court are hereby waived.

(A.S.GADKARI, J.)