IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.431 OF 2017
WITH
CRIMINAL APPLICATION NO.303 OF 2017

Pujit Ravikiran Aggarwal ... Applicant
versus
The State of Maharashtra ... Respondent

Mr.A.P.Mundargi, Senior Advocate, with Mr.Subhash Jadhav, Mr.Chandan Singh Shekhawat, Mr.Aniket Nikam and Mr.Shivam Nimbalkar i/by ALMT Legal for Applicant.

Smt.Veena Shinde, APP, for State.

CORAM : PRAKASH D. NAIK, JJ.

DATE : 13th July 2017

PC :

1. This is an application for bail in connection with CR No.98 of 2016 investigated by Economic Offences Wing, General Cheating-1 Branch, Mumbai. The offence is registered under Section 420 of Indian Penal Code (`IPC').

2. The prosecution case is that an first information report (`FIR') was lodged with Azad Maidan Police Station, Mumbai vide CR No.173 of 2016, which was subsequently transferred to Economic Offences Wing, General Cheating-1 Branch, Mumbai. The offences were registered under Section 420 r/w Section 34 of IPC. Subsequently, the charge under Sections 3,4 and 5 of Maharashtra

Ownership Flats Act (`MOFA Act') has been invoked against Applicant. The Applicant was arrested on 8th September 2016.

3. It is the prosecution case that the Applicant is the director of M/s.Orbit Corporation Limited engaged in the business of land development and construction. The complaint is lodged on behalf of M/s.Capri Global Advisory Private Limited, earlier known as Money Matters Investment Advisors Private Limited. The Money Matters Investment Advisors Pvt. Ltd. had booked two flats with the Applicant's company in a project Orbit Residency Park situated at Saki Naka, Andheri for a consideration of Rs.1,22,61,500/- each aggregating to Rs.2,45,23,000/-. Similarly M/s.Overview Properties Pvt.Ltd. booked one flat for Rs.1,22,61,500/-. LIC Housing Finance Corporation had financed the said project and LIC Housing Finance Corporation Limited had the first charge over the said flats. It is alleged that the Applicant had suppressed the said fact from the complainant. It is alleged that the complainant was not put to notice that there is a loan transaction with LIC Housing Finance Corporation with Orbit Corporation Limited. It is alleged that the Applicant's company had entered into an agreement in respect of three flats with the complainant and accepted a sum of Rs.2,53,43,775/-. It is alleged that the flats were mortgaged with LIC Housing Finance Corporation Limited. The amount received from the complainant's company has not been deposited into the account of LIC Housing Finance Corpn. Ltd.. It is further alleged that the Applicant had not informed LIC Housing Finance Corpn. Ltd. that he has accepted the finances from M/s.Capri Global Advisory Private Limited by mortgaging the flats. The Applicant had misappropriated the amounts received from M/s.Capri Global Advisory Private

Limited and cheated the complainant as well as LIC Housing Finance Corporation Limited. It is further alleged that several other purchasers of the flats had also invested their money for purchase of flats, who were also not given the possession of the flats. He, therefore, alleged that the Applicant had cheated the complainant, LIC Housing Finance Corpn. Ltd. and other purchasers, and committed an offence of cheating and under MOFA Act.

4. Learned advocate for the Applicant submitted that the dispute is purely of commercial nature. There was no intention to cheat the complainant or any other person. It is in the circumstances which were beyond the control of the Applicant's company, that project could not be completed. It is submitted that the first informant and the accused had a long association of business transactions and it was the complainant who had brokered the financial facilities granted by LIC Housing Finance Ltd.. It is further submitted that the complainant was aware about the fact that Applicant's company had obtained loan/financial assistance from LIC Housing Finance Corn. Ltd.. He relied upon the ledger account and invoice dated 21st September 2010 which show that the complainant had knowledge about the fact of mortgage of premises with LIC Housing Finance Corpn. Ltd.. It is submitted that when the project Orbit Residency Park was advertised, it was stated that the project is financed by LIC Housing Finance Ltd. Reliance was placed on extracts of the advertisement published in leading newspaper `The Times of India'. It is submitted that requisite permissions for the project were obtained in June-2010 and further commencement certificate was granted in August-2010 and April-2011. On account of various factors and policies, there was delay in handing over possession of

flats. It is further submitted that LIC Housing Finance Corpn. Ltd. has initiated recovery proceedings before Debts Recovery Tribunal, at Mumbai (`DRT') against the Applicant's company. It is further submitted that approximately Rs.247 crores have been paid to LIC Housing Finance Corpn. Ltd. by Applicant and proceedings before DRT are still pending. It is submitted that the Applicant is in custody for long period of time. Investigation is complete and charge sheet has been filed.

5. Learned APP vehemently opposed the application for bail. It is submitted that the Applicant has induced the complainant and other persons to purchase the flats and he had not fulfilled the said promise. It is submitted that the complainant was kept in dark about the mortgage created in respect of the flats with LIC Housing Finance Corpn. Ltd.. It is submitted that several investors had invested money who are put to loss on account of non fulfillment of promise made by Applicant. It is submitted that there are antecedents against the Applicant. The said fact is already dealt with in the order passed in Bail Application No.432 of 2017. The Applicant has committed white colour crime. Huge amount is involved in the present case. There is material showing involvement of Applicant in the crime. Learned APP, therefore, submitted that the Applicant is not entitled for bail.

6. I have perused the documents on record. It is true that project could not be completed by the Applicant company. However, from the documents it appears that the complainant was aware of the loan agreement of the Applicant's company with LIC Housing Finance Corpn. Ltd.. The complainant had booked three flats with Applicant,

which is the subject matter of present FIR. The loan financed by LIC Housing Finance Corpn. Ltd. is secured by creating mortgage and substantial loan amount has been paid by Applicant to LIC Housing Finance Corpn. Ltd.. The terms and conditions for the deposits were altered between LIC Housing Finance Corpn. Ltd. and Applicant's company. It appears that requisite permissions for the construction of the buildings and commencement certificate was also granted in August-2010 and April-2011 respectively. The LIC Housing Finance Corpn. Ltd. has initiated proceedings before DRT for recovery of loan granted to Applicant, which are still pending and it appears that Applicant has paid approximately Rs.247 crores till date. The investigation is complete and charge sheet is filed. The Applicant is in custody from the date of arrest. The offences are triable by Magistrate. The maximum punishment for the offence under Section 420 of IPC is seven years.

7. Taking into consideration the aforesaid circumstances, bail can be granted to the Applicant. Hence, I pass following order :

ORDER

(i) Bail Application No.431 of 2017 is allowed;

(ii) The Applicant is directed to be released on bail in connection with CR No.173 of 2016 registered with Azad Maidan Police Station, Mumbai, which was subsequently transferred to Economic Offences Wing, General Cheating-1 Branch, Mumbai and was registered as CR No.98 of 2016, on furnishing PR bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount;

(iii) The Applicant is directed to report the investigating officer of

EOW, General Cheating-1 Branch, Mumbai once in a month on first Saturday of the month between 11.00 a.m. and 1.00 p.m;

(iv) The Applicant is directed to surrender his passport to the investigating officer of EOW, General Cheating-1 Branch, Mumbai, if not yet surrendered;

(v) The Applicant shall not tamper with the evidence and witnesses;

(vi) Bail Application No.431 of 2017 is disposed of;

(vi) Criminal Application No.303 of 2017 also stands disposed of.

(PRAKASH D. NAIK, J.)

MST