

Amk

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

ANTICIPATORY BAIL APPLICATION NO. 331 OF 2017

Rupesh Ambo Sapat	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

Mr. Praveen Laxman Singh for the Applicant.
Ms. P. P. Shinde, APP for the Respondent.

CORAM : A.S. GADKARI, J.
DATE : 30th MARCH, 2017.

P. C. :

1. The applicant is apprehending arrest in C.R. No. I-473 of 2016 registered with Mahatma Phule Police Station at Kalyan under Sections 420, 406 of the Indian Penal Code and Sections 3, 4 & 5 of the Maharashtra Owners of Flats and Apartments Act.
2. The FIR is lodged by Shri Ramesh Ananda Rane, inter alia, alleging that he read an advertisement of Shri Bhupati Homes Builders and Developers in Maharashtra Times in the year 2014 about the construction of houses at village Vasargaon/Newali situated at Haji Malang Road, Taluka-Ambernath. Thereafter he contacted the builders of the said project, namely, Mr. Amit Singh and Mr. Sunil Rathod and paid an amount of Rs.8,45,000/- towards the consideration of three rooms. Despite after a substantial lapse of period, he did not get the possession of the said rooms and therefore he contacted the builders, namely, Mr. Sunil Rathod,

Mr. Amit Singh and Mrs. Pinki Rathod. However, the said persons on some of the other pretext avoided, neglected and failed to give the possession of the rooms booked by the complainant. In the premise, he lodged the First Information Report.

3. The learned counsel for the applicant submitted that the applicant has nothing to do with the project which was constructed under the banner of Shri Bhupati Homes Builders and Developers and Shri Ganesh Homes Builders and Developers. That the other accused persons Shri Sunil Rathod, Pinki Rathod and Amit Singh are the owners of the said firms. He further submitted that neither the name of the applicant is mentioned in the FIR nor any role is attributed to him. He further submitted that the applicant did not receive any amount from the complainant or any other person who booked the flats/rooms in the said project. He submitted that it is for the first time in the remand report dated 30.01.2017 the name of the applicant has been mentioned by the police stating that the applicant has received some payment from the accused Sunil Rathod for and towards another construction work which was undertaken at village Bapgaon, Taluka Kalyan. He therefore prayed that the applicant may be granted pre-arrest bail.

4. The learned APP fairly conceded the fact that neither the name of the applicant nor any role is specified to him in the FIR. She, on instructions, further submitted that the applicant has no role to play in the present crime except the allegation that the applicant has received some

amount from the accused on Sunil Rathod. She, therefore, submitted that, appropriate orders in the interest of justice may be passed.

5. I have perused the documents annexed to the application and the record produced by the learned APP. It appears that the applicant was having some business transaction with respect to the construction activities undertaken by him at village Bapgaon, Taluka Kalyan and for the same, accused Sunil Rathod has paid an amount of Rs.20,00,000/- to his father i.e. Tejusingh Rathod and Rupesh Sapat i.e. the applicant which was derived by sale of rooms/flats in the project of Shri Bhupati Homes Builders and Developers at Vasargaon/Nevali, Taluka Ambernath. Apart from the said alleged role played by the applicant in the present crime, which has come on record for the first time on 30.01.2017 in the remand report, there is, prima facie, no other evidence available on record, against the applicant in the present crime. In view thereof, I am of the opinion that the applicant has made out a case for grant of pre-arrest bail.

6. Hence, the following order:

- (i) In the event of arrest of applicant in C.R. No. I-473 of 2016 registered with Mahatma Phule Police Station at Kalyan, the applicant shall be released on bail on his furnishing PR bond of Rs.25000/- with one or two solvent local sureties in the like amount.
- (ii) The applicant shall attend the Investigating Officer as and when called for between 11.00 a.m. to 1.00 p.m. and to join

the process of investigation till the filing of the charge-sheet.

It is needless to mention that before calling the applicant to the Police Station, the concerned Investigating Officer shall issue a notice under Section 160 of the Criminal Procedure Code and specify the date and aforesaid time therein.

(iii) The applicant shall not tamper with evidence and/or influence the prosecution witnesses.

(iv) The application is allowed in the aforesaid terms.

[A. S. GADKARI, J.]