

Anand

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

BAIL APPLICATION NO.470 OF 2017

Chandrakant Yadav Waghmare

.Applicant

Vs.

The State of Maharashtra & anr.

.Respondents

Mr.R.V.Javanjal i/b. Mr.Aniket Gawand, Advocate, for the
Applicant

Mr.Y.M.Nakhwa, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 20.04.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-135 of 2016 registered with the Khandeshwar Police Station, Navi Mumbai, for the alleged offence punishable under Section 420 of the Indian Penal Code and under Sections 4(1), 13(1) of the Maharashtra Ownership Flat Act (For short “MOFA” Act).

3. Learned counsel for the Applicant seeks bail on the ground of parity. He submits that similarly placed co-accused Anil Dattatray Nanaware has been enlarged on bail by this Court

(CORAM : MRS. MRIDULA BHATKAR, J.) vide Order dated 14.02.2017 passed in B.A.No.2323 of 2016. Learned counsel for the Applicant has tendered an Affidavit of the Applicant where he has given an undertaking to pursue the permission with NAINA and has undertaken to complete the project and register the Sale Deeds with the customers and handover the flat premises to the purchaser. He has undertaken to complete the project. The Affidavit is taken on record and marked as "X" for identification.

4. Learned APP does not dispute the fact that similarly placed co-accused Anil Dattatray Nanaware has been enlarged on bail by this Court (CORAM : MRS. MRIDULA BHATKAR, J.) vide Order dated 14.02.2017 passed in B.A.No.2323 of 2016.

5. Perused the papers. The Complainant is one Ganesh Kondiba Yelkar. According to the Complainant, in 2013, he came across an advertisement of Sai Enterprises Builders and Developers that they were constructing residential buildings and shops near Panvel Railway Station. According to the Complainant, he enquired with Anil Nanaware and the present Applicant and thereafter, booked a flat, being Flat No.402

admeasuring 375 Sq.ft of one BHK for Rs.10,00,000/- in the said project. According to the Complainant, the accused promised to give possession within 15 months pursuant to which payments were made by him. He has stated that there was no progress in the work and that the accused were avoiding the registering of the Agreement to Sale and were neither refunding the amount. It is also alleged by the Complainant that on enquiry, he learnt that the accused had promised eight other persons of flats and the said persons had paid a sum of Rs.18,35,000/-, however, no agreements were entered into by the accused with the said persons.

6. Learned counsel for the Applicant submitted that the Applicant has not cheated any of the purchasers. He submitted that the Applicant had started construction of the building in Survey No.6, Hissa No.1 of Chiple village and that 70% of the construction was complete. He submitted that the project could not proceed because of the policy of CIDCO and due to the stop work notice dated 03.02.2015. He submitted that the accused had applied for regularization of the Scheme and were in the process of getting an NOC from CIDCO so that the stop work notice could be withdrawn.

7. A perusal of the Order dated 14.02.2017 passed by this Court (CORAM : MRS. MRIDULA BHATKAR, J.) shows that the Applicant therein i. e. Nanaware had stated that he would execute and register the Agreement for sale with the Complainant and other flat purchasers who have paid 20% of the amount as per the requirement of Scheme 4 of MOFA. In view of the statement made by co-accused therein, this Court granted bail to co-accused - Nanaware. The Applicant has also given an undertaking to this Court that he will pursue with the permission which is pending with NAINA and has also undertaken to get the Sale Deeds registered with the purchasers and handover flats.

8. Considering the aforesaid and on the ground of parity, the Applicant is enlarged on bail on the following terms & conditions:-

O R D E R

(i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;

(ii) The Applicant shall attend the concerned Police Station on the first Monday of every month between 10:00 a.m. to 11.00 a.m. till the conclusion of the trial;

(iii) The Applicant shall not leave India without permission of the trial Court;

(iv) The Applicant shall deposit his passport, if any, within one week of his release;

(v) The Applicant shall not tamper with the or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(vii) The Applicant to cooperate with the conduct of the trial;

(viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

9. The Application is allowed in the aforesaid terms and is accordingly disposed of.

10. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its

own merits, in accordance with law, uninfluenced by the observations made in this order.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)