

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

CRIMINAL BAIL APPLICATION NO. 1213 OF 2017

Kapil Balkrishna Merchant and anr. ...Applicants

Versus

The State of Maharashtra ...Respondent

**WITH
CRIMINAL APPLICATION NO. 584 OF 2017**

IN

CRIMINAL BAIL APPLICATION NO. 1213 OF 2017

Mukesh Amritlal Jain ...Intervener

Kapil Balkrishna Merchant and anr. ...Applicants

Versus

The State of Maharashtra ...Respondent

Mr. Shyam B. Keshwani i/b. Mr. C. R. Mishra & Mr. Pradeep L. Dubey
for the applicant.

Mr. Ashishkumar Kapadnis, APP for the respondent-State.

Mr. Ashwin R. Rana, for the intervener.

API Shrirang Sanas, V. P. Road Police Station present.

CORAM : PRAKASH D. NAIK, J.

DATE : 3 JULY 2017

P.C. :

1. The applicants were arrested on 21 March, 2017 in connection with CR No.381 of 2015 registered with V.P. Marg Police Station, Mumbai. The offences were registered under sections 420, 406 read with 120B of IPC.

2. The applicants and other persons were named as the accused in the said complaint. The co-accused who is employee of the applicants has been granted bail.

3. The prosecution case is that the applicants are developers and contractors. They are carrying their business in the name of M/s. K. Merchants Construction Private Limited. They are developing building Ekveera Sadan at Mumbai. The first informant had approached the applicant through his friend and the complainant was induced to purchase the flat. He was represented that the accused / applicant are constructing 23 storey building and two flats remained on the 19th floor. The two flats i.e. flat no.1901 and 1902 were available for sale. Flat no.1901 was allegedly available for consideration of Rs. 35 lakhs and flat no.1902 for consideration of 40 lakhs. Redevelopment had started in the year 2009. Initially it was for 16 floors and the applicant was in process of obtaining permission of construction upto 19 floors. It was represented to the complainant that they may book the flats as the applicants would get permission for further floors. The complainant paid an amount of Rs.49,69,420/- to the applicants. The consideration was paid in respect to the said flats. The flats were not allotted. Hence, FIR was

lodged.

4. The applicants were arrested on 22nd March, 2017 and since then they are in custody. On completing the investigation, the chargesheet has been filed.

5. Learned advocate for the applicants submitted that there is sanctioned plan for constructing twenty floors. It is further submitted that the complainant had lodged repeated complaints to various authorities as a result of which there were several impediments in completing the construction. He further submitted on instructions that applicants are willing to hand over the possession of the said flats as agreed upon to the complainant. He submitted that the applicants are senior citizens and they are in custody since long. Investigation is completed and the chargesheet is filed. There are no criminal antecedents against them and hence they may be released on bail.

6. Learned APP and learned advocate or the intervener strongly opposed the application for bail. It is submitted that the applicants have cheated the complainant. Although the promises were made that they will complete the construction and hand over the flats to

the complainant, it was not fulfilled. It is submitted by the learned advocate for the intervener that the applicants have no authority to carry out construction of the second flat on 19th floor. The only flat which can be constructed on the 19th Floor has to be allotted to the tenant who was occupying the premises earlier. Hence there is no flat available on 19th floor to be handed over to the complainant. He further submitted that although the applicant has submitted that he would hand over the possession of the flats, there is no legal sanctity to the construction on the 19th floor and the question of accepting the flats on the said floor does not arise. It is submitted by the advocate for the complainant and the learned APP that the conduct of the applicant does not deserve them to be released on bail.

8. Perused the documents on record. It is noticed that promises about the construction was being made by the applicants to the complainant. He is willing to hand over the possession on complying legal formalities. The matter relates to the execution of the agreement and the applicants are being in custody since March, 2017. The investigation is completed and the charges leveled against the applicants are under sections 406, 420 of IPC. The matter relates to documents. The applicants have admitted that they have received

consideration to the tune of Rs.49,69,420/- from complainant. On completion of the investigation, the chargesheet has been filed and further detention is not required. The applicants are senior citizens. The applicant no.1 is aged about 69 years and applicant no.2 is 55 years old person.

9. Taking into consideration the aforesaid circumstances, bail can be granted to the applicants.

ORDER

- (i) Bail Application No.1213 of 2017 is allowed.
- (ii) The applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.1,00,000/- (Rupees one lakh only.) each with one or more sureties in the like amount.
- (iii) The applicants are directed to report V.P. Marg Police Station, Mumbai once in a week till further orders.
- (iv) The applicants are permitted to furnish the cash security for a period of one week in the sum of Rs.1 lakh each.
- (v) Bail Application stands disposed of.

(vi) In view of disposal of Bail Application, Criminal Application
No.584 of 2017 stands disposed of.

[PRAKASH D. NAIK, J.]