

51-BA 257 of 2018

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

BAIL APPLICATION No. 257 OF 2018

Avinash Rakesh Mishra

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Subhash Jha a/w. Ms. Ankita Pawar a/w. Mr. Siddhartha Jha i/b. Law
Global- Advocates for Applicant

Ms. Veera Shinde- App

Mr. S.B. Shete, API, EOW-01, New Mumbai

CORAM : SMT. SADHANA S. JADHAV, J.

DATE: JUNE, 4, 2018

P.C.

1. Heard. This is an application under section 409, 420, 506 r/w. 34 of the Indian Penal Code r/w. Section 4(1) and 13(1) of the Maharashtra Ownership of Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963. The investigation is completed and chargesheet is filed.
2. The accused was arrested in the course of investigation. His name is reflected in the first information report. The supplementary chargesheet was filed against the applicant in the course of further investigation.
3. It is the prosecution case that on 17th April, 2016 one Shashikant

Prabhakar Kamble had booked a flat with Aditya Builders & Developers Pvt. Ltd. through the present Applicant. It appears that the property in question belongs to one Mahadev Dhau Patil, who was the proprietor of Sagar Builders & Developers. Initially the property was to be developed by Aditya Builders & Developers. However, subsequently, Aditya Builders & Developers by a letter dated 31st March, 2016 had informed Sagar Builders & Developers that due to some unfortunate reasons, they would not be able to complete the residential project launched by name 'Balaji City' and that they have cancelled the Memorandum of Understanding executed between the owners Shri Mahadev Dhau Patil and others of the said properties and that the amount which was deposited with Aditya Builders & Developers would be refunded to the customers, who have cancelled their bookings of the flats prior to 31st of March, 2016.

4. The present Applicant was a Property Consultant and Agent for Aditya Builders & Developers. That the present applicant had addressed a letter to the Director of Aditya Builders & Developers on 24th February, 2016. The said letter was particularly addressed to Mahendra Pavankumar Singh. He had specifically expressed his grievance that the people had shown faith in him and booked the flats with Aditya Builders & Developers and had invested a large

amount in the project and the said project had not even started. According to him people would lose faith in him and he would lose his reputation. He had also expressed his grievance against one Mr. Babloo Gupta. Another grievance was that the Aditya Builders & Developers had appointed unworthy people as directors and, therefore, the reputation of the Aditya Builders & Developers would be at stake. He specifically states that the people would not know the directors of the Aditya Builders & Developers but there would be breach of trust by the booking agent.

5. On perusal of the investigation papers, chargesheet and statements of the witnesses, it transpires that the present Applicant had assured some of the customers about the credibility of the Aditya Builders & Developers and also had also assured that their amount would be refunded at the earliest. However, there is no material to indicate that the amount collected by the Applicant towards booking the flats was not paid to the Aditya Builders & Developers. It appears that the prosecution is relying on the fact that the assurance given by the Applicant to the people, who had booked the flats, was not fulfilled by him. It is a matter of fact that the assurance of refund of the amount was to be completed by the Aditya Builders & Developers and not by the Applicant since he was not the beneficiary. The letter also discloses that the Applicant was

aggrieved with the Aditya Builders & Developers since he had not received the commission at the proper time.

6. The investigation is over and chargesheet is filed. There is no material on record to show that since 17.4.2016, the Applicant was absconding and he was not available to the police. It appears that he had co-operated with the investigation from 17.4.2016 to 3.10.2017 as he was not in custody at that relevant time.

7. Taking over all view of the facts of the case, prima facie, this Court is of the view that the Applicant has made out a case for grant of bail. It is made clear that the observations made by this Court are restricted only for the application filed under section 439 of the Code of Criminal Procedure and shall not be taken into consideration for quashing of FIR or discharge application or at the time of trial. Hence, the following order:

ORDER

- (i) The Bail Application is allowed.
- (ii) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount.
- (iii) The Applicant shall not leave Mumbai and Navi Mumbai till conclusion of the trial.

- (iv) The Applicant shall appear before the Court on each and every scheduled date.
- (v) Upon failure to appear before the Court on any two consecutive dates, the prosecution is at liberty to file proceedings against the Applicant under section 439(2) of Cr. P.C.
- (vi) At the request of the learned counsel for the Applicant, the Applicant be enlarged on provisional cash bail of Rs.50,000/-. The Applicant shall furnish the sureties within four weeks to the satisfaction of the Court.

[SMT. SADHANA S. JADHAV, J.]