

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.640 OF 2017

Nilesh Sadashiv Nirbhavne, Age 35 years,
R/o.Nirbhavne Mala, Binsuri Dalvi Road,
At Post Ravari, Tal. & Dist. Nashik,
At Post R/o.D, 108, Gopal Krishna Park,
Haji Malang Road, Kalyan (E), Dist.Thane
Presently lodged at Kalyan Central Prison

Applicant

versus

The State of Maharashtra

Respondent

Mr.Abhay Kumar Apte I/by P.L.Bhujbal for applicant.

Mr.Arfan Sait, APP, for State.

Mr.Abhay Dhuri, Senior Police Inspector, EOW, Thane City, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 12th October 2018

PC :

1. This is an application for bail in CR No.I-507 of 2014 registered with Mahatama Phule Chowk Police Station, Kalyan for offences under Section 420 r/w Section of 34 of Indian Penal Code.

2. The prosecution case is that the complainant had lodged the FIR on 17th July 2014. There are four accused involved in the crime. The accused had promised the complainant and others that they would be allotted premises on depositing the amount. The complainant had visited the office of M/s.Everest Builders and Developers, Kalyan. At that time the applicant and other accused were present. Inquiries were made with regard to availability of residential premises. The accused represented that rooms are

available for a consideration of Rs.3 to Rs.4 lakh at Nevli Naka. The complainant issued cheque of Rs.89,000/- and subsequently Rs.80,000/-. A sum of Rs.11,000/- was also paid in cash. Thus, he parted Rs.1,80,000/- to the proprietor of M/s.Everest Builders and Developers. When he inquired about possession of the room, the assurance was given to him that the same would be provided. However, the promise was not fulfilled. It is submitted that there were about 40 other prospective purchases and accused had accepted Rs.52.59 lakhs from the victims. On completing the investigation, charge sheet was filed.

3. The applicant preferred application for bail before the Sessions Court which has been rejected on 16th November 2016. Thereafter he preferred another application for bail which was rejected on 20th February 2017.

4. Learned advocate for applicant submitted that other accused namely Ajay Jadhav and Ramprakash Rajput were granted anticipatory bail by Sessions Court. The applicant is in custody from the date of arrest and further detention is not necessary. The applicant did not receive any amount from the customer. The applicant was arrested on 26th September 2016 and since then he is in custody. The applicant has not participated in the crime.

5. Learned APP submitted that there is sufficient evidence against the applicant. He was actively involved in the crime. The name of applicant is specifically mentioned in the FIR. He did not produce the agreements made with the investors. By giving advertisements in the newspapers, the applicant had induced the purchasers to part

with amount towards purchase of premises by giving falls representation that same would be provided at the cheaper rate. It is submitted that the applicant's role is spelt out in the evidence collected by police. It is also submitted that the application for bail preferred by the co-accused has been rejected by this Court. Thus, the applicant is not entitled for bail.

6. I have perused the documents on record. The compilation of charge sheet indicates that substantial evidence to show involvement of the applicant in inducing the purchasers to invest money for purchase of the premises. Although promises were made, the proposed scheme was not floated. The statements of the witnesses indicate that they have entered into agreements with the applicant and the co-accused Santosh Ballal. During the course of investigation, Shop Act license was seized from the house of applicant. The agreements were executed in the year 2013. It is pertinent to note that complicity of the applicant is established during the course of investigation. The accused have duped several investors. They were made to invest the amounts in the project of low cost housing at Nevli Naka which was a reserved plot of Central Government for aerodrome project. The accused who were granted bail have different role and parity cannot be claimed by the applicant. Thus, there is sufficient evidence against the applicant in the crime. Taking into consideration aforesaid circumstances, no case for grant of bail is made out. Criminal Bail Application No.640 of 2017 is rejected.

7. While rejecting the application for bail preferred by Santosh Ballal, this Court vide order dated 8-2-2017 had requested the Trial

Court to make an endeavour to conclude the trial as far as possible. It is submitted by learned counsel for applicant that there is no progress in the trial. Even the charge has not been framed. In the circumstances, the Trial Court is directed to conclude the trial within a period of six months from the date of receipt of a copy of this order.

(PRAKASH D. NAIK, J.)

MST