

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1254 OF 2018

Mohankumar Pamanath Suvarna,
Age 51 years, Occ.Business,
R/o.903, Sai Taravani Apartments,
Sector No.6A, Kamothe, Navi Mumbai
(Presently lodged in Arthur Road Jail) Applicant
versus
The State of Maharashtra Respondent

WITH
CRIMINAL BAIL APPLICATION NO.2820 OF 2017

Mohankumar Suvarna, Age 59 years,
R/o.903, A Wing, Therwani Residency,
Sector 6A, Kamothe, Navi Mumbai-410209
(Presently lodged in Mumbai Central Jail) Applicant
versus
The State of Maharashtra Respondent

Mrs.Shabana Sathe for applicant in both matters.
Mr.A.R.Kapadnis, APP, for State.
Mr.Amol Mane, PSI, EOW, present.
Mr.Sunil Ankulikar, API, Pantnagar Police Station, present.
Mr.Feroz Shaikh with Mr.Jayesh for complainant.

CORAM : PRAKASH D. NAIK, J.

DATE : 31st October 2018

PC :

1. These are applications for bail. Both the applications are preferred by the same person. The applicant was accused in CR No.438 of 2017 which is subject matter of Bail Application No.1254 of 2018 on 27th October 2017; whereas he was arrested in

connection with CR No.46 of 2016 investigated by Economic Offences Wing, Unit-2 on 23rd March 2017. Two different FIRs were registered in respect to two projects. The offences were registered under Sections 420 and 406 of Indian Penal Code and under Sections 3, 5, 8, 11 and 13 of Maharashtra Ownership Flats Act, 1963 vide CR No.438 of 2017; whereas offences under Sections 409, 406, 420 and 34 of Indian Penal Code and Sections 3,4,5,8,11 and 13 of Maharashtra Ownership Flats Act, 1963 were registered in connection CR No.46 of 2016.

2. The basic allegation in both the cases is that the accused had promised that possession of premises would be handed over to the purchasers of flats within stipulated time which could not be fulfilled. There are about seven persons who had purchased the flat premises. The said purchasers are represented and identified by the advocate. They filed an affidavit. The affidavit is taken on record and marked "X" for identification. In the said affidavit it is stated that as per draft memorandum of understanding ('MOU'), construction of the building would be completed within a period of eighteen months from the date of accused being released on bail. The victims have agreed to draft MOU and have no objection if the accused is released on bail. The applicant has also given written undertaking that as soon as he is released on bail, necessary MOU and other agreements will be duly executed by him. It is further stated that victims have agreed to the consent terms which are duly signed by them. The consent terms are also signed by the applicant-accused. The authority letter which is issued by other victims in favour of complainant is also placed on record. The undertaking signed by the applicant-accused dated 20th October 2018 which is

affirmed before the jail authorities, is also part of the affidavit filed by victims. Similarly in connection with CR No.46 of 2016, the victims (purchasers of the flats) had filed similar affidavits along with undertaking signed by the applicant. The victims who had filed affidavits are identified by learned advocate representing them. The said affidavit is also taken on record and marked "Y" for identification. It is also submitted by learned advocate for applicant that the dispute relating to CR No.46 of 2017 is referred to the arbitrator and is pending.

3. Learned APP submitted that the victims had intimated the investigating officer about compromise executed with the applicant. It is also confirmed that in relation to CR No.438 of 2017, there are six victims and in respect to CR No.46 of 2017, there are about 40 victims who are before the Court and have tendered the affidavits. Learned APP submitted that on verification it is found that the project which is subject matter of CR No.438 of 2017, is not handed over to a new developer. Learned APP further submitted that the victims be directed to appear before the investigating officer for recording their statements in relation to MOU executed with the applicant.

4. Taking into consideration the aforesaid circumstances and also considering the fact that the applicant is in custody since last about two years, investigation is completed and charge sheet is filed, bail can be granted to the applicant.

5. Accordingly, I pass following order :

ORDER

- (i) Criminal Bail Application No.1254 of 2018 and Criminal Bail Application No.2820 of 2017 are allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.438 of 2017 registered with Pant Nagar Police Station, Mumbai on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant is directed to be released on bail in connection with CR No.46 of 2016 registered with Economic Offences Wing, Unit No.II, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iv) The applicant is permitted to furnish cash security in respect of both cases in the sum of Rs.25,000/- each for a period of six weeks;
- (v) The applicant shall adhere to the consent terms. In the event there is breach of consent terms, the prosecution will be at liberty to prefer application for cancellation of bail.

(PRAKASH D. NAIK, J.)

MST