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

ANTICIPATORY BAIL APPLICATION NO.1403 OF 2017

Mohan B. Rathod & Ors.

... Applicants

V/s.

The State of Maharashtra .

... Respondent

Ms. Anjali Patil a/w Arun Rajput for Applicants.

Ms. Rutuja Ambekar, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 16th JANUARY 2018.

P.C.:

1] Heard the learned Counsel for the applicants and the learned APP. Perused the record.

2] By an Order dated 10.08.2017 this Court had granted interim relief to applicants nos.2 and 3 and did not grant interim relief to applicant no.1.

3] The record indicates that on 11.09.2017 applicant no.1 Mohan Rathod tendered an affidavit-cum-undertaking in this Court. Para No.3 of the said undertaking reads as under:-

“I say that I undertake to enter into a Sale Deed with the Customers with whom I already executed the agreement of

sale for the agricultural land. I say that the token amount the customer has paid at the time of Executing the Agreement of Sale and in the same amount. I undertake to enter into sale deed as early as possible within the period of one month or as per the availability of customers. Hereto annexed and marked Exhibit "A" is the copy of list of customers with whom I entered into Agreement of Sale who has approached the Police.

Exh.A of the said undertaking mentions names of 22 persons from whom the applicants have accepted amounts towards sale of plot/flat of land.

4] The record further indicates that on 26.09.2017 applicant no.1 Mohan Rathod has submitted additional affidavit-cum-undertaking dated 18.09.2017 and had assured that he will execute a Sale Deed with other persons within one month on the date of execution of the said undertaking. The said fact is recorded in the Order dated 26.09.2017. The Order dated 26.09.2017 is self explanatory, wherein the undertaking given by the applicant No.1 has been enumerated in detail. In view of the undertaking given by applicant no.1 Mohan Rathod in his affidavit-cum-undertaking dated 26.09.2017 this Court was pleased to grant interim relief also in favour of applicant no.1 Mohan Rathod. That on 12.10.2017 the learned APP on instructions submitted that several persons had deposited money with the applicants and had booked plots, but neither possession of the said

plots were given to those persons, nor money deposited by them has been refunded to them. The said fact is recorded in the Order dated 12.10.2017. The Investigating Officer Shri. Kirankumar Wagh has filed an affidavit dated 10.11.2017 giving a list of 36 witnesses who claimed that they have been cheated by the applicants by adopting similar *modus operandi*. It is to be noted here that, in the two affidavits-cum-undertaking filed by applicant no.1 Mohan Rathod dated 11.9.2017 and 18.09.2017 the exact number of persons from whom he has accepted deposits by assuring or promising to them to deliver plots has not been mentioned and both the said undertakings have been cleverly drafted with utmost vagueness in it. The suppression of fact by the applicant No.1 in his affidavit-cum-undertaking aggravates the gravity of the offence. There is no reason to have any contrary view than what has been stated in the affidavit of the investigating officer dated 10.11.2017.

5] After perusing the record, it clearly indicates that, applicant no.1 by giving undertakings to this Court that he will settle the matter with all the said gullible plot/flat purchasers has only procured time for extension of interim relief granted in favour of the applicants by this Court from time to time. As noted earlier, the applicant No.1 has clearly failed in

complying with the undertakings given to this Court. Today also, the applicant No. is seeking further time to comply with the undertakings and/or to settle the matter with other persons. As noted earlier, the applicant No.1 was granted sufficient time to settle the matter with all the concerned persons. However, he has failed to do so till today.

6] In view of the above, this Court is of the view that the interim relief granted in favour of the applicant No.1 by an Order dated 26th September 2017 is liable to be vacated and is accordingly vacated forthwith. As a consequence thereof, ABA/1403/2017qua the applicant No.1 does not survive and is accordingly dismissed.

7] At this stage, the learned Counsel for the applicant Nos.2 and 3 submitted that the applicant Nos.2 and 3 are nowhere directly concerned with the present crime and they have been taken into the said Company for its formation purpose only. She submitted that, without prejudice to their rights and contentions and with a view to prove their bonafide, the applicant Nos.2 and 3 are ready and willing to deposit 50% of total alleged defalcated amount of Rs.1.02 Crores. She submitted that the applicant Nos.2 and 3 will deposit Rs.51.00 lakhs in the Registry of this Court within a period of two weeks from today, failing which they shall surrender to the

Investigating Officer without seeking further extension of time in that behalf. The said statement is accepted as an undertaking given to this Court. In view thereof, the applicant Nos.2 and 3 are granted pre-arrest bail.

8] In view of the above, following Order:

(i) The application for pre-arrest bail of the applicant No.1 is rejected.

(ii) As far as application of the applicant Nos.2 and 3 is concerned, they are granted pre-arrest bail on the following terms:

(a) In the event of arrest in CR No.226 of 2017 registered with Mahatma Phule Chowk Police Station, Kalyan, the applicant Nos.2 and 3 shall be released on bail on their furnishing PR bond of Rs.25,000/- each with one or two solvent local sureties in the like amount.

(b) The applicant Nos.2 and 3 shall not tamper with evidence and/ or influence the prosecution witnesses.

9] As noted earlier, if the applicant Nos.2 and 3 fail to deposit Rs.51.00 lakhs in the Registry of this Court within two weeks from today, the applicant Nos.2 and 3 shall, either themselves surrender before the

Investigating Officer or the Investigating Officer shall take appropriate steps as may be permissible in law therein.

10] Application is allowed partly in the aforesaid terms.

(A.S.GADKARI, J.)