

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

ANTICIPATORY BAIL APPLICATION NO.1868 OF 2017

Nitin Jagannath Zende	...Applicant
Versus	
The State of Maharashtra & Anr.	...Respondents

.....

Mr. Sachin K. Hande for the Applicant.
Mr. S.R. Agarkar, APP for the Respondent -State.
Mr. Ramesh Tripathi for the Respondent No.2-Intervenor.
Mr. M.M. Talugade, Police Naik, EOW Section 2, Navi Mumbai,
present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 24th SEPTEMBER, 2018.

P.C.:-

This is an application under Section 438 of the Cr.P.C. filed by the aforesaid Applicant apprehending his arrest in C.R. No.53 of 2017 registered with Kamothe Police Station, Navi Mumbai, for offences punishable under Sections 406 and 420 r/w. 34 of the Indian Penal Code, 1860 and Sections 4(1) and 13(1) of Maharashtra Ownership of Flats (Regulations of the Promotion of Construction, Sale, Management Transfer) Act, 1963.

2. Heard Mr. Sachin Hande, the learned counsel for the Applicant, Mr. S.R. Agarkar, the learned APP for the Respondent No.1-

State and Mr. Ramesh Tripathi, the learned counsel for the Respondent No.2-Intervenor. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by one Nandkishor Dalvi. Perusal of the FIR prima facie reveals that the first informant had come across an advertisement issued by Unity Builders and Developers in respect of a project named Tirupati Complex. The first informant was interested in purchasing a flat. He therefore, visited the office of the Unity Builders and Developers. He was introduced to the Applicant herein, as a builder/developer of the said project. The Applicant assured him that he had entered into a development agreement with the owner of the land under survey No.681/A-1, Motha Khanda village, Taluka-Panvel, District Raigad. He also assured him that title of the said land was clear and that he has obtained necessary permissions from the concerned authorities. The Applicant assured that the construction would be completed and that possession of the same would be given by December-2016. Based on the assurances given by the Applicant herein, the first informant booked two flats and two shops in the said project and paid

Rs.21,00,000/- by cheques during the period from 12.1.2015 to 20.1.2015.

4. The first informant claims that construction of the said project was stopped and upon enquiry, he learnt that the Applicant had handed over the said project to Vastu Siddhi Builders and Developers and that one Deepak Patil was the new Developer of the said project. The first informant approached the new Developer and asked him about the status of the project. Said Deepak Patil informed him that the construction would be commenced after getting permission from CIDCO. The first informant claims that since said Deepak Patil did not start the construction, he requested them to refund the booking amount. However, neither the Applicant nor the co-accused-Deepak Patil repaid the booking amount. Subsequently, the first informant received information that the land, wherein proposed project was to come up was already acquired by CIDCO and that the Builder had no authority to commence construction. He learnt that the Applicant had received Rs.4,24,34,850/- as booking charges. The first informant therefore filed the FIR against the Applicant and another for cheating, breach of trust and misappropriation, etc.

5. The records prima facie reveal that land was originally owned by Bhimabai Kamlakar Bhoir and others. Said land under Survey No.681/A-1, Motha Khanda village, Taluka-Panvel, District Raigad, was already acquired by CIDCO from the original owners and the original owners were allotted another plot under 12.5 scheme. Despite which the Applicant prepared a development agreement, prima facie, with an intention to cheat innocent purchasers. The records prima facie reveal that the Applicant had stated that they were willing to compensate the purchasers by selling certain properties, however, investigations revealed that said properties have already been mortgaged to secure the loan availed by the Applicant. The affidavit filed by the Investigation Officer also shows that Shivkrupa Patpedhi has already obtained award under Section 101 of the Maharashtra Co-Operative Society Act, 1960 in respect of the flats of the Applicant in view of non payment of loan and possession of the said flats, which were offered to satisfy the amount claimed by the complainant, is with Shivkrupa Patpedhi. The records thus, prima facie indicate that the Applicant has cheated the purchasers. The records also show that a similar case being C.R. No.195 of 2015 is registered against the Applicant with Khandeshwar Police Station for offence under section 420 of the IPC. The affidavit filed by the Investigation Officer also

indicates that the Applicant was not available for interrogation and investigation.

6. Considering all the above facts and circumstances, including the conduct of the Applicant, in my considered view the Applicant is not entitled for pre-arrest bail. Hence, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

Megha
Shridhar
Parab

Digitally signed
by Megha
Shridhar Parab
Date:
2018.10.19
18:26:14
+0530