IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2148 OF 2018

Haresh Sakalchand Hirani and others ... Applicants
versus
The State of Maharashtra ... Respondent

WITH
CRIMINAL APPLICATION NO.1317 OF 2018

Jigar Amrut Chheda ... Applicant
versus
The State of Maharashtra ... Respondent

Mr.Ashok Kavade for applicants in ABA No.2148 of 2018
Mr.Sushil M. Gaglani for - applicant-intervenor in CA No.1317/2018.
Ms.A.A.Takalkar, APP, for State.
Mr.Biradar, PSI, Juhu Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd October 2018

PC :

1. This is an application for anticipatory bail in connection with CR No.425 of 2018 registered with Juhu Police Station for offences under Sections 406, 420 read with Section 34 of Indian Penal Code.

2. The applicant no.1 is the Chairman of M/s.Shamik Enterprises whereas applicant no.2 is the Director and applicant no.3 is sales executive of said company. M/s.Shamik Enterprises is a private limited company duly registered under Companies Act and mainly engaged into business of construction, development and redevelopment of real estate.

3. The prosecution case is that the complainant had filed a complaint with police on 8th September 2018. It is alleged that the complainant had visited the exhibition sponsored by MCHI at Bandra-Kurla Complex in 2012. He was intending to purchase a flat. He visited the stall of M/s.Shamik Enterprises. The applicant no.3 was working as a sales manager in the said stall. It was represented by him that the company is going to commence redevelopment project at Chacha Nagar at Andheri (West), Mumbai. He provided preliminary information. He also communicated the said information on e-mail to the complainant. There were meetings between them in January-2013 in respect to the purchase of property. The said accused told the complainant that building will be constructed having 13 floors and salable components will be situated from 9th to 13th floors. Thereafter meeting was held between the complainant and the accused. He was also represented that all the permissions in respect to the constructions were received by them. They induced the complainant to book flat and represented that he would receive possession of the flat in December-2015. The complainant was also asked to deposit 45% amount of the total consideration. The complainant decided to book the flat on 9th floor. The letter dated 10th March 2013 was issued and complainant was informed that he had booked flat no.904 admeasuring 905 sq.ft for the consideration of Rs.2.39 crores. The complainant paid Rs.67,41,150/-. The complainant came to know that construction has not commenced. He started making inquiries about it with the accused-applicants, who gave assurances. The complainant thereafter paid Rs.49,39,930/- with service tax. The complainant also gave Rs.32,00,000/- in the year 2013. He was not provided

with the receipt. Thereafter further demand was made on account of payment of stamp duty and change in flat area. The complainant had deposited the amount accordingly. However, he did not get receipt. The complainant also insisted for execution of agreement which was avoided by the accused for one reason or the other. They issued allotment letter dated 13th March 2013. The complainant realized that material conditions are not incorporated in the allotment letter. The construction of the project did not commence. The agreement was not executed. The amount was not returned to the complainant. Thus, the complainant realized that he has been cheated and, therefore, lodged the first information report with police.

4. Apprehending arrest, the applicants had preferred an application for anticipatory bail before the Court of Sessions, which has been rejected vide order dated 12th October 2018.

5. Learned counsel for applicant submits that on account of unavoidable circumstances the project could not be completed. It is further submitted that there was no intention of cheating the complainant. It is submitted that the complainant had booked the flat as an investor. The applicants are willing to return the amount deposited by the complainant. The efforts in that regard were made by applicant. Attempts were made to resolve the dispute. The demand draft of Rs.30,00,000/- to show bona fides and by way of payment towards settlement was issued in the name of complainant, however, the same was not encashed by the complainant. It is submitted that the applicants are willing to return the amount deposited by the complainant along with reasonable interest to the

complainant, however, the complainant has been demanding exorbitant amount from the applicants. It is further submitted that the applicants had also offered other options to the complainant of alternate premises which is also not accepted by him. It is submitted that payments were made through cheque, however, alleged deposits were inflated by belatedly stating that even cash amount was paid by the complainant to the accused. It is submitted that in view of the aforesaid circumstances, the custodial interrogation of the applicant is not necessary. It is submitted that applicants have moved for quashing of earlier FIR lodged against them. It is, therefore, submitted that the applicants may not be subjected to custodial interrogation and the application for anticipatory may be allowed.

6. Per contra, learned APP submitted that the accused had made false promises to the complainant and induced him to book the flat by depositing huge amount. The flat has not been handed over to the complainant nor the amount deposited by him was refunded to him. It is submitted that one more case is registered against the applicants vide CR No.697 of 2017 with Samata Nagar Police Station for offences under Sections 420 and 406 of Indian Penal Code. It is submitted that there is one more person who has come forward with the grievance that even he had booked a flat by depositing the amount and the promises were found to be false.

7. Learned counsel for intervenor reiterated the submissions advanced by prosecution. In addition to that, it is submitted that apart from the cheque payments, the complainant had also paid amount towards booking of flat by cash. He relied upon the endorsement made by the accused. It is further submitted that the

accused were aware that project will not be implemented and in spite of knowledge, they induced the complainant to book the flat and in accordance with the inducement, the complainant had book the flat by depositing the amount. It is submitted that the allotment letter does not indicate in any manner that the complainant is an investor in the said project. The documents clearly stipulate that the amounts were deposited towards booking of flat. It is submitted that requisite permissions were not obtained by the applicants. Although project was not viable, false promises were made, which is apparent from the records. He further submitted that even today the accused are advertising for booking of the flats in the same project.

8. Considering totality of circumstances, it is apparent that although the complainant had booked the flat and deposited huge consideration, the promises were not fulfilled. Prima facie it appears that the project was not viable and in spite of that promises were made to the complainant to book the flat. Be that as it may, the fact remains that in spite of booking the flat in the year 2013, neither the building is ready nor construction activity has commenced. Although promises were made that it is a redevelopment project and would be completed by December-2015, the old building is yet not demolished and approvals for construction of new building have not yet been received. Considering above factual position, no case for grant of anticipatory bail is made. Criminal Anticipatory Bail Application No.2148 of 2018 is accordingly rejected. Criminal Application No.1317 of 2018 is allowed and disposed off.

(PRAKASH D. NAIK, J.)

MST