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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2212 OF 2018

Ashok Shah Devichand ShahApplicant

V/s.

The State of Maharashtra and anotherRespondents

Mr. Tiwari & Mr. Singh i/b Mr. Manoj P. Mhatre for the Applicant
Mr. Sushil Gaglani for Respondent no. 2
Ms. A. A. Takalkar APP for the State
Mr. Biradar, PSI, Juhu Police Station

CORAM : NITIN W. SAMBRE, J.

DATE : 22nd NOVEMBER, 2018.

P.C.

The Applicant is seeking pre-arrest bail in crime no. 425 of 2018 registered with Juhu Police Station for offence punishable under Sections 420, 406 r/w 34 of the Indian Penal Code and Sections 3, 4, 5, 8, 11 and 13 of the Maharashtra Ownership Flats Act (MOFA).

2 It is the case of the Applicant that he being a developer, entered into an agreement for purchase of flat and paid part consideration thereof. The Contract in question was contingent one and if the event therein has not taken place, the same cannot attract the provisions of Sections 420, 406 of the Indian Penal Code.

3 *Per contra* the learned APP opposes the bail on the ground that the Applicant has received the entire consideration and issued allotment letter. In spite of the same, no construction was carried out and the apartment was not handed over to the complainant.

4 Considered rival submissions.

5 The case of the Applicant appears to be that he is no more a Director in the company since 2015 and has already returned part of the consideration.

6 The said conduct on the part of the Applicant speaks voluminous about the fact that there was an agreement and the

agreement was not taken to its logical end. The payment received is also stood acknowledged by the Applicant.

7 Apart from above, the fact remains that the Applicant has utilized the amount of consideration received from the complainant for last more than three years. In view of above, *prima facie* involvement of the Applicant in the present case cannot be ruled out. As such, the Application fails, rejected.

[NITIN W. SAMBRE, J.]