

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

ANTICIPATORY BAIL APPLICATION NO. 110 OF 2019

1. Prakash Jibhai Borat
2. Umesh Parshuram Rao ... Applicants
Vs.
The State of Maharashtra ... Respondents

**WITH
CRIMINAL APPLICATION NO. 63 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO. 110 OF 2019**

Siddharth Mehta ... Intervenor

In the matter between

1. Prakash Jibhai Borat
2. Umesh Parshuram Rao ... Applicants
Vs.
The State of Maharashtra ... Respondents

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Mr. S.V. Marwadi a/w Mr. Ashwin Rana I/by Mira A. Kadam for the applicant.

Mr. Mubin Solkar I/by Swapnil Wagh for the intervenor.

Ms. A.A. Takalkar, APP for the Respondent-State.

Mr. Ajay Kadam, API, EOW-IX, Mumbai is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 17th JANUARY, 2019.

P.C.

1. Applicants are apprehending arrest in connection with CR No. 93 of 2018 registered with E.O.W Unit-IX, Mumbai for the

offence punishable under Section 409, 420, 120(b) of Indian Penal Code. Applicant had preferred an application before the Sessions Court which has been rejected on 19th December, 2018.

2. The prosecution case is that the first informant had entered into an agreement dated 15th October 2008 with the applicant's company for the purchase of flat No. 801 situated on the 8th floor of the proposed building Harnesswala Co-operative Housing Society admeasuring 1550 sq.fts to be constructed on sub plot No. 10 of plot No.1 survey no. 287, CTS No. 33. Applicant agreed to handover possession of the premises on or before 30th June, 2010. It is alleged that the consideration was fixed of Rs.3 crores. The complainant paid full consideration through the account of his firm M/s Balaji Developers. It is further alleged although the promises were made that the possession will be given as stated herein and the consideration was paid to the applicant, there was complete failure on their part to hand over possession or to return the amount paid towards consideration. Applicant kept on assuring that projects would be completed soon. They demanded additional 1 crore. The complainant paid that amount in trenches. Applicants have contended that project was delayed due to technical issue which would be sorted out at the early possible.

Till December, 2013, the project was far from the completion. The informant therefore realized that there is something amiss. Applicants were not reachable. After the complainant established contact with them, applicants had tried to give explanation for delay in the completion of project. However, inspite of waiting, the promises could not be fulfilled by the applicants and there was failure on the part of the accused to fulfill the agreement. In the circumstances awaiting for a long period of time and since there was complete failure on the part of accused to fulfill the promises the complainant realized that there was dishonest intention on the part of the accused and therefore first information report was lodged with the concerned police station on 23rd October, 2018.

3. Learned counsel for the applicant submitted that there was no intention to deceive the complainant. Project could not be completed due to technical issues and unavoidable circumstances. In 2007 Development agreement was executed between Harneswala Co-operative Hsg. Society and applicant's company. M/s Zenal Construction Pvt. Ltd., Mr. Sanjay Punamiya shown interest to buy residential premises in the said project and booked flat no. 301. He told applicants to prepare agreement in the name of complainant as he is the investor. On account of restricted zone

of military Mr. Punamiya insisted for another flat in lieu of flat No.801, in another project. Applicant No.1 granted two flats to Mr. Punamiya in another society. It is further submitted that the agreements were registered. Requisite ingredients to constitute penal offences are completely absent in the present FIR. It is submitted that the complainant has also initiated civil suit which is pending in the competent court. It is submitted that the relief sought in the said suit is in respect to the non-performance of the agreement and the facts are apparently similar to First Information Report. It is submitted that the applicants had forwarded letter dated 28th May, 2018 to EOW and provided detail of transaction. In the factual matrix of the present case custodial interrogation of applicants is not necessary. Entire matter relates to the documents. Learned counsel for the applicant relied upon the agreements executed with Punamiya and submitted that complainant was investor. Documents are in possession of the investigating machinery. He further submitted that in another case arising out of CR No. 246 of 2018, the applicants had preferred an application for anticipatory bail before this Court which was allowed vide order dated 17th November, 2018. It is submitted that while allowing the said application, this Court had observed that the

dispute is of civil nature. It is submitted that other cases registered against the applicants are also in relation to the performance of the agreements.

4. Learned APP submitted that after execution of agreement, as stipulated therein, the possession of the premises was to be handed over in 2010, however, the promises were turned out to be false. It is submitted that there was no intention on the part of the applicants to hand over the possession of the said premises. It is further submitted that the transaction which was purportedly executed with one Punamiya is executed in 2012 and the said transaction has nothing to do with the agreement executed by the applicants with the complainant. It is further submitted that the applicants are habitual offenders cases are registered against the applicants vide CR No. 269 of 2016 with Amboli Police station and CR No. 346 of 216 registered with Juhu Police Station. It is therefore submitted that the application be rejected.

5. Learned counsel for the intervenor reiterated the submissions advanced by the learned APP. In addition to that it is submitted that dishonest intention is implicit from the record and the conduct of the applicants. It is submitted that the transactions which is executed with one Punamiya as contended by the

applicants has no relevance with the execution of agreement with the complainant. It is submitted that the complainant is not a signatory nor party to the said agreements executed with Punamiya. He further submitted that the document indicate that the applicant No.1 was acquainted with Punamiya since past and is trying to plead false defence of executing agreement with him. It is further submitted that applicants have annexed one of the said agreement executed with Punamiya and second is not, which is required to be recovered. It is further submitted that two other cases are registered against the applicants. He also submitted that Administrative Commandent had forwarded letter to the office of Deputy Chief Engineer with regards to NOC for construction of the building on the subject flat on 10th March, 2014 and the agreements were executed in 2012. It is submitted that the conduct of the applicants clearly shows that there was dishonest intention on their part to deceive the complainant.

6. I have perused the documents. It is apparent that the agreement for sale was executed in respect to flat No. 801 on the 8th floor of the proposed building between the company of the applicant and the complainant. Premises were to be handed over to the complainant in 2010. It is also apparent that the

consideration for execution of the said agreement was also parted to the applicants. The defence of the applicants is that on account of technical issues or situation beyond their control, the construction could not be completed and therefore the possession of the premises was not given to the complainant. It is pointed out by learned APP that construction is not carried till today. Contention of the applicant is that on account of the letter issued by the Corporation, the construction could not be carried out. The other defence of the applicants is that agreements were executed with one Punamiya. Complainant is not signatory to the said agreements. It is pertinent to note that the applicants had executed similar transaction in respect to flats No. 601 with one Ramesh Shah and for not fulfilling the promise, two other complaints were registered against the applicants. On perusal of the documents on record, submissions advanced by both the parties, I do not find that there is any infirmity in the order passed by the Sessions Court while rejecting the application for anticipatory bail. Considering the factual matrix of the case and the submissions advanced by the learned APP, I do not find any reason to allow the application for anticipatory bail. Hence, I pass the following order.

ORDER

- i. Anticipatory Bail Application No. 110 of 2019 is rejected.
- ii. Criminal Application No. 63 of 2019 stands disposed off.

(PRAKASH D. NAIK, J.)