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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 528 OF 2017
WITH
CRIMINAL APPLICATION NO. 709 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 528 OF 2017

Tarique Shaukat Chunawala .....Applicant

V/s.

The State of Maharashtra .....Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 529 OF 2017

Tarique Shaukat Chunawala .....Applicant

V/s.

The State of Maharashtra .....Respondent

WITH
CRIMINAL APPLICATION NO. 1184 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 529 OF 2017

Dharamveer Singh ....Intervener

<u>IN THE MATTER BETWEEN</u>

Tarique Shaukat Chunawala .....Applicant

V/s.

The State of Maharashtra .....Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 530 OF 2017

Mr. Tarique Shaukat Chunawala ....Applicant

V/s.

The State of Maharashtra ....Respondent

WITH
CRIMINAL APPLICATION NO. 1185 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 530 OF 2017

Maheshkumar Sunderlal Rohila ....Intervener

IN THE MATTER BETWEEN

Mr. Tarique Shaukat Chunawala ....Applicant

V/s.

The State of Maharashtra ....Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 531 OF 2017

Mr. Tarique Shaukat Chunawala ....Applicant

V/s.

The State of Maharashtra ....Respondent

WITH
CRIMINAL APPLICATION NO. 1183 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 531 OF 2017

Prashant Subhash Natekar ....Intervener

IN THE MATTER BETWEEN

Mr. Tarique Shaukat Chunawala ....Applicant

V/s.

The State of Maharashtra ....Respondent

Mr. Nitin Pradhan i/b Shubhada Khot for applicant in all ABA
Mr. Rajiv Chavan Senior Advocate Spl PP a/w Ms. Priyanka Chavan, Anupama Pawar, Sumangala Yadav i/b Smt. J. S. Lohokare APP for the State
Mr. Ramesh Dube-Patil i/b M/s. Jay and Co. for interveners.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 13, 2019.

P.C.

All these pre-arrest bail applications are moved by the accused claiming that he is entitled to be released in the event of arrest in Crime Nos I-158 of 2015, I-155 of 2015, I-152 of 2015 and I-157 of 2015 registered with Arnala Sagari Police Station, Virar, Dist.

Palghar for offence punishable under sections 120B, 409, 406, 467, 468, 471, 420 r/w 34 of the Indian Penal Code and Sections 13 and 14 of the Maharashtra Ownership of flats (Regulation of the promotion of construction, sale, management & transfer) Act, 1963 and under section 3 & 4 of the Maharashtra Protection of Interest (in financial establishment) of Depositors Act, 1999.

2 Since the facts in all the offences, role attributed to the applicant is similar, as such, all these applications, by consent of all parties, are disposed of by this common order.

3 The case of prosecution is complainant booked flat/shop blocks with Ionic Reality and after accepting consideration, said Ionic Reality had issued acknowledgment. In September 2014, Ionic Reality transferred the project in question to Crystal Homecon and as such Crystal Homecon demanded addition consideration and also reduced the area which was promised to be delivered to the complainant. As such, complaint came to be lodged resulting into registration of crime in question. The nature of the transaction could be summarized as under:

(1) Plot of land owned by M/s. Paranjape Construction Company of which Jayant Moreshwar Paranjape, who is one of the partner and a co-accused in this crime is owner of Survey Nos.80 and 81 at Kofrad village, Tq. Vasai, District Thane. M/s. Paranjape Construction Company applied to CIDCO for permission to develop the above plot. CIDCO by its letter dated 29.08.1991 rejected the permission as a result of which an appeal was filed by M/s Paranjape Construction Company. This appeal was allowed by order dated 29.05.1992. Subsequently CIDCO issued commencement certificate permitting M/s Paranjape Construction Company to commence construction.

(2) A Development cum Sale Agreement dated 13.09.2005 was executed between M/s. Paranjape Construction Company and M/s. ADA Construction, M/s. Perfect Solution and Management and M/s. Tarique Chunawala in respect of the said plot.

(3) A Memorandum of Understanding was executed on 16.10.2009 between Mr. Tarique Chunawala, Mr. Naresh Jain and Azam Khan, co-accused, to form a company, with an intention t o start business of development of properties.

(4) On 31.12.2009 a joint Development Agreement was also executed between M/s. Paranjape Construction Company and Ioinic

Reality Ltd. For the development of plots of land at Survey Nos: 80 and 81 as stated above. Another joint agreement dated 14.06.2010 was executed between M/s. ADA Construction, M/s. Perfect Solution and Management and M/s. Tarique Chunawala and Ionic Reality Private Ltd. for developing the plot at Survey Nos: 80 and 8.

(5) Subsequently dispute arose between the Company of Applicant viz. M/s. Paranjape Construction Company on the one hand and M/s. ADA Construction, M/s. Perfect Solution and Management and M/s. Tarique Chunawala on the other hand, which dispute was referred to arbitration, in which, on 11.06.2011 consent terms were filed. An award was passed on 13.06.2011, which was executed. As such, M/s. ADA Construction, M/s. Perfect Solution and Management and M/s. Tarique Chunawala have became owners of the property at Kofrad Village, Taluka-Vasai, District-Thane. It was this property that was sought to be developed by the present Applicant through his company Ioinic Reality Private Ltd., after acquiring development rights.

(6) Original owner i.e. M/s. Paranjpe Construction Company had applied for the development of the plot which was granted to it by CIDCO between 01.06.1983 to 04.06.1993. The said fact was recorded in clause (4) of the Development cum Sale Agreement, dated 13.09.2005 executed among the said M/s. Paranjpe Construction Company and M/s. ADA Construction, M/s. Perfect

Solutions and Management and Mr. Tarique S. Chunawala.

(7) A Memorandum of Understanding dated 23.12.2014 was executed between Mr. Azam Khan, Mrs. Nasreen Khan and Mr. Nazir Khan on the one hand and Ionic Reality (Eco City) Pvt. Ltd. with Sonata Reality Pvt. Ltd. as confirming party and Crystal Homecon Pvt. Ltd., as developers and M/s. ADA Construction, M/s. Perfect Solution and Management and M/s. Tarique Chunawala as parties of third part. As per this Memorandum of understanding the applicant and his Company paid to Mr. Tarique Chunawala and his group i.e. Crystal Homecon Pvt. Ltd. a sum of Rs. 22 Crores.

(8) Thereafter it was informed by Ionic Reality (Eco City) Pvt. Ltd. to all flat purchasers that by Development Agreement dated 01.09.2014, Ionic Reality (Eco City) Pvt. Ltd. had assigned their Development rights in respect of the project Ionic Reality (Eco City) Pvt. Ltd. to Crystal Homecon.

4 It is the case of the prosecution that amount of around Rs. 40 Crores from in all 1400 prospective purchasers was accepted towards booking amount. M/s.Crystal Homecon accepted amount of Rs.11 Crores out of the aforesaid booking amount from 400 investors.358 investors invested amount Rs. 10.5 Crores with Cystal

Homecon, 224 investors with Ionic Reality, which, in turn, further invested the amount with Crystal Homecon Pvt. Ltd. As such total 1142 investors came forward demonstrating deposit of around Rs. 41 Crores. Instead of taking the aforesaid project against which the amount of consideration was accepted to its logical end, applicant, one of the major financial beneficiary in the aforesaid project, started living lavish life. It is claimed that present applicant has defrauded the prospective purchasers to the tune of Rs. 16 Crores for his own pecuniary benefit and cheated the investors. As such, offence in question.

5 Present applicant actively participated in the execution of joint Development Agreement between M/s. Ada Constructions, M/s. Perfect Solutions, Tarique Chunawala and M/s. Ionic Reality (Eco City) Pvt Ltd. with subsidiary Company M/s. Ionic Company (Eco City) Pvt. Ltd for development of Rs. 2.16 Lakhs Sq. Meter area. The present applicant is shown to be co-owner of the said property. Having accepted huge amount towards booking, without handing over the developed property to such prospective purchasers,

applicant walked out of the said project claiming to have been resigned from the Firm in 2011. Based on the aforesaid development, applicant is seeking pre-arrest bail in the matter.

6 The submissions of the learned counsel for the applicant is, the nature of dispute in which the offence is registered is civil and as such, remedy to the complainant lies before the civil or other competent forum. That being so applicant deserves pre-arrest bail. According to him, necessary ingredients of the offence in question are not made out.

7 Other submissions are the office bearer of Crystal Homecon Pvt. Ltd. i.e. applicant have settled the claim of the complainant in ABA 1412 of 2015. The co-accused namely Vishram Sawant of M/s. Crystal Homecon Pvt. Ltd, Azam Khan of Ionic Reality (Eco City) Pvt. Ltd. has accepted the entire liability and that being so, applicant's custodial interrogation is not warranted. It is claimed that no criminal intention of the applicant can be inferred so as to register the offence against the applicant as the applicant has neither

received the amount of booking nor promised delivery of property to the prospective buyers.

8 *Per contra* the learned APP submits that the entire offence which is having economic colour is out of deep rooted conspiracy between all the accused persons. According to the learned APP, investigation till date reveals that applicant has received substantial amount of consideration and the role of the applicant in the commission of offence is required to be thoroughly investigated. As such, custodial interrogation is very much required. It is also brought to the notice of this Court that the investigation in the matter is still going on as some of the accused are absconding. As such, rejection is sought.

9 Admittedly, applicant has received the amount of Rs.22 Crores from co-accused Azam Khan, his Firm. M/s Crystal Homecon Pvt.Ltd. has received Rs.11 crores from flat booking, Rs.10.50 crore are received by him from investors. Just because the applicant has transferred his rights in the project and has walked away from the

Firm by tendering resignation will not absolve himself of criminal liability, being one of the major financial beneficiary. Rather, on 23.12.2014, Applicant has actively participated in execution of MOU by accepting amount of Rs.22 crores.

10 Material on record shows, while floating the project in question, applicant has participated in the planning and has received the amount. Applicant is trying to pass on the responsibility and the liability to the other co-accused so as to get rid of his entire liability including criminal liability. However, record depicts the mode and manner in which the offence in question was committed which warrants custodial interrogation. Deep rooted conspiracy can be inferred from the investigation papers.

11 The zeal of the lower or middle income group people, so as to bring their dream alive, has been encashed by the land-sharks like the present applicant thereby accepting hard earned money of the prospective buyers. This Court cannot be oblivious to the fact that applicant, in calculated and pre-planned manner designed to

commit the offence in question for his own pecuniary gains. Investigation in the matter is already going on and some of the accused are still absconding.

12 The offence of cheating, as is noticed against the present applicant in the crime in question, completely disturbs the financial planning of the lower strata people who have dream of buying their own house out of their hard earned money. The Court cannot turn a blind eye to such factual reality. Intention of the applicant of having illegal financial gain by committing offence of cheating is apparent from the material available on record.

13 This Court in the matter of **Santosh Shankar Ingale Vs. The State of Maharashtra** in **Bail Application No. 1528 of 2017** has already taken the following view:

> *"**10**----- the economical offences need to be categorised altogether differently and are of exceptional class. Such matters particularly relating to prosecution and bail applications are required to be decided with different approach than the regular bail matters. The reason being,*

causing financial and economical loss to the public exchequer are based upon deep rooted conspiracies and as such needs to be viewed seriously. Because of the acct of the applicant, the entire financial structure of the Corporation has reached to lowest pedestal resulting into causing a serious threat to the financial health of the said Corporation. In this respect, appropriate support can be drawn from the judgment of the Apex Court, in the matter of ***Nimmagadda Prasad Vs. Central Breau of Investigation*** *reported in (2013) 7 SCC 466, para 25.*

11....*if the applicant is released in a serious economical offence like the one, there is every likelihood that the applicant may tamper with the investigation; and it is in the interest of community/society at large to continue the applicant in detention during pendency of the prosecution. A support, to that effect, can be drawn from the judgment of the Apex Court in the matter of* ***Masroor Vs. State of Uttar Pradesh & another,*** *reported in 2009 (14) SCC 286".*

14 In the wake of above, no case for grant of pre-arrest bail is made out. All Anticipatory Bail applications stand rejected.

15 All other applications also stand disposed of.

[NITIN W. SAMBRE, J.]