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

**CRIMINAL BAIL APPLICATION NO. 1385 OF 2017
WITH
CRIMINAL APPLICATION NO. 164 OF 2019**

Azam Khan

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

Mr. Niranjan Mundargi i/b Mr. Sathyanarayanan for the applicant
in BA 1385 of 2017.

Smt. J. S. Lohokare, APP

Mr. Alok Kumar Bagla, for applicant in Criminal Application No.164
of 2019.

CORAM : NITIN W. SAMBRE, J.

RESERVED ON : FEBRUARY 13, 2019.

PRONOUNCED ON : APRIL 12, 2019.

P.C.

Applicant herein is seeking regular bail in M.P.I.D. Special
Case No. 2 of 2016 pending on the file of Learned Additional
Sessions Judge-1, Vasai arising from Crime No. 152 of 2015
registered with Arnala Sagari Police Station 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. Applicant came to be arrested on 07/09/2016. Applicant is charge-sheeted in December 2016.

2 The case of the prosecution is, the complainant booked 1 BHK flat and one shop in a housing project, Ionic Reality (Eco City) Private Limited after making part consideration. The applicant-accused, director of the said company accepted the part consideration and given written assurance of delivery of possession. According to prosecution, the project in question was handed over to Crystal Homecon Private Limited who has reduced the area to be given to each of the customers than the one promised earlier and asked additional consideration of Rs. 2 Lakhs. The prosecution claims that of the 1400 flat purchasers, applicant received amount to the tune of Rs. 40 Crores and without honouring the demand of

delivery of developed property, handed over the project to Crystal Homecon. The nature of transaction between the firm of the applicant could be summarized as under:

(a) The construction proposed by the applicant is on plot of land bearing Nos: Survey Nos: 81(Hissa No: 5 to 8), Survey Nos: 80 (Hissa No: 5/1 and 5/2) situated at Kofrad Village, Taluka-Vasai, District-Thane. Initially this plot of land was owned by M/s. Paranjape Construction Company of which Jayant Moreshwar Paranjape is one of the partner and co-accused.

(b) 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.

(c) 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.

(d) A Memorandum of Understanding was executed on 16.10.2009 between Mr. Tarique Chunawala, Mr. Naresh Jain and the present Applicant, to form a company.

(e) 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 81.

(f) Subsequently dispute arose between 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 despite was referred to arbitration. On 11.06.2011 consent terms were filed in the said arbitration proceedings. An award was passed on 13.06.2011, which was executed. Pursuant to this M/s. ADA Construction, M/s. Perfect Solution and Management and M/s. Tarique Chunawala became owners of the property at Kofrad Village, Taluka-Vasai, District-Thane.

(g) This property was taken over for development by the present Applicant through his company Ioinic Reality Private Ltd., after

acquiring development rights.

(h) The Applicant thereafter issued allotment letters to the First Informant and other proposed flat purchasers. The applicant thereafter issued letter dated 12.07.2014 to all prospective flat purchasers informing them to attend meeting on 09.08.2014.

(i) Original owner of this land i.e. M/s. Paranjpe Construction Company hold development permission of the plot issued 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.

(j) In recital clause (c) of Joint Development agreement, dated 31.12.2009 executed between M/s. Paranjpe Construction Company and M/s. Ionic Reality Pvt. Ltd. through Mr. Tarique S. Chunawala it is stated that CIDCO has approved the plan for development of the said land on 14.06.1993. In recital (e) of said development agreement, it is stated that M/s. Paranjpe Construction Company has submitted the plan to CIDCO and the said plan is pending consideration. The agreement was for composite Development of the properties more particularly as described in both the schedule therein on the terms and conditions mentioned therein.

(k) A revised plan for Development of the plot was submitted through Architect M/s. Mistry Associates by the Company of the applicant on 10.12.2012 to Vasai and Virar Municipal Corporation.

(l) Another Development Agreement was executed on 01.09.2014 between M/s. ADA Construction, M/s. Perfect Solutions and Management and Mr. Tarique S. Chunawala and Ionic Reality (Eco City) Private Limited and Crystal Homecon Pvt. Ltd. by which Crystal Homecon Pvt. Ltd. took over the development rights of Ionic Reality (Eco City) Private Limited.

(m) In view of the above position by a Deed of Cancellation dated 04.09.2014, joint Development Agreement dated 24.11.2011 was cancelled.

(n) On 25.11.2014 a Development Agreement was executed between M/s. Perfect Solutions and Management and Mr. Tarique S. Chunawala (as owner therein) and Mark Technobuild and M/s. Crystal Homecon Pvt. Ltd. By which Crystal Homecon Pvt. Ltd. for developing property situated at Kofrad Village admeasuring 1,32,360.71 sq. mtrs.

(o) 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 Mr. Tarique Chunawala and his group i.e. Crystal Homecon Pvt. Ltd. a sum of Rs. 22 Crores.

(p) 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.

3 In the aforesaid background, while trying to make out a case for grant of bail, the learned counsel for the applicant would urge that further custodial detention of the applicant is not warranted as for more than past two years, he is in custody. According to him, necessary ingredients of the offence in question are not made out. A submission is canvassed that the nature of controversy has a colour of contractual/civil dispute and that being so, remedy to the flat purchasers lies before other competent forum. The learned counsel

for the applicant also claims that the applicant is entitled to be released as there are serious medical ailment for which treatment is going on and that being so, he is entitled to be released.

4 *Per contra* the learned APP submits that the entire investigation reflects a serious economic offence being committed by the applicant wherein his *prima facie* involvement could be inferred. The learned APP submits that the applicant-accused is provided appropriate treatment under the orders of the Court and the investigation in the offence is still going on as some of the accused are still absconding. Further submission is, the applicant has played large scale fraud and that being so, there is sufficient material to infer his *prima facie* involvement in the crime in question.

5 Considered rival submissions. Perused investigation papers.

6 The fact remains that applicant having accepted consideration over and above Rs. 40 Crores from around 1400 prospective buyers with a false promise of delivery of developed property can be inferred

from the material available on record.

7 In the present scenario of social structure of the society, it is day in and day out noticed that each member, either for himself or for his family, dream of having his own home. Such person or his family members so as to make their dream alive, save major part of their earning. These savings coupled with the financial assistance from the Institutions like Bank, Credit Societies, etc., gives an hope of having their own house/flat, etc. It is this genuine desire of the small people like complainants is encashed dishonestly by the applicant. The applicant along with other co-accused, in a calculated manner, hatched a conspiracy and cheated the people of their hard earned money.

8 The fact that the applicant entered into an Understanding on 23.12.2014 with co-accused Tarique Chunawala and based on same, informed the prospective purchasers about the development agreement dated 01.09.2014 and not honouring such commitment, *prima facie*, demonstrates involvement of the applicant in the

offence.

9 Just because the applicant is not keeping good health, in my opinion, cannot be a ground to order his release. The prosecution has demonstrated that the applicant is provided with appropriate treatment.

10 Investigation in the matter is already going on and some of the accused are still absconding.

11 The offence of cheating and forgery 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. It is the intention of the applicant of having illegal financial gain by committing offence of cheating is apparent from the material available on record.

12 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”.*

13 In the wake of above, this Court hardly notice any case for grant of regular bail to the present applicant. As such, application fails, stands rejected.

[NITIN W. SAMBRE, J.]