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

ANTICIPATORY BAIL APPLICATION NO. 873 OF 2018

Deepak Bhikanrao MoreApplicant

V/s.

The State of MaharashtraRespondent

**WITH
CRIMINAL APPLICATION NO. 592 OF 2018**

Manish Deodatta JoshiIntervener

IN THE MATTER BETWEEN

Deepak Bhikanrao MoreApplicant

V/s.

The State of Maharashtra and anotherRespondents

ANTICIPATORY BAIL APPLICATION NO. 1412 OF 2018

Tarachand PrasadApplicant

V/s.

The State of Maharashtra and othersRespondents

**WITH
CRIMINAL APPLICATION NO. 1026 OF 2018**

Manish Deodatta Joshi

....Intervener

IN THE MATTER BETWEEN

Tarachand Prasad

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

Mr. Sureshkumar J. Panicker a/w Sucheta Panicker i/b Panicker and Associates for the applicant in ABA 1412 of 2018

Mr. Vinod Gangwal for the applicant in ABA 873/2018

Mr. Vinod Gangwal i/b Ms. Abha C. Sharma for intervener in APPP 1026/2018

Mr. Mandar Limaye i/b Mr. Ketan Dhavle for intervener in APPP 592/2018

Mr. S. S. Hulke APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 12, 2019.

P.C.

In Crime No. 258/2017 registered with Khandeshwar Police Station punishable under Sections 420, 406 r/w 34 of the Indian Penal Code and Section 13(A) of the Maharashtra Ownership Flat Act, 1963 (MOFA) applicants are seeking pre-arrest bail.

2 The prosecution case is, complainant and other similarly

placed persons, Ex-servicemen came across a brochure whereby Jupiter Infrastructure (Bangalore Private Limited) claiming to be a company consisting of Ex-Defence personnel floated an infrastructure project by name Commanders Gateway to be developed at Panvel New Bombay on Survey nos. 16, 21, 23 and 26.

3 The complainant, booked a row house admeasuring 184.225 square meters, of which possession was assured in April 2014, however, since the project was not taken to its logical end, complainants sought cancellation and demanded refund of booking amount. The cheques issued by the builders towards refund of the booking amount were dishonoured which further prompted the complainant to approach the police resulting into offence in question.

4 Case of the applicants is even if they are/were directors of M/s. Jupiter Infrastructure project, said Jupiter was working as commission agent for the main builders. M/s. Jupiter was never into the business of infrastructure development but were getting commission of about 8% on the bulk booking from the main builder.

According to applicants they never received any commission in the project in question and that being so they are falsely implicated. According to the learned counsel for the applicants, all the applicants are Ex-Servicemen and their act in the capacity of directors of the Jupiter company was in the interest of Ex-Servicemen. He submits that there exists a dispute between complainants and the builder as proceedings under Negotiable Instruments Act are going on as the cheques for refund of booking amount issued by builders were dishonoured. A further submission is applicants are neither beneficiaries of the amount paid by the complainant to builder nor there is any corresponding obligation of refund or to honour the commitment of delivery of developed property. So as to maintain goodwill and their service background, applicants have tried to help the complainant in getting back booking amount, if not housing at competitive rate. It is further claimed that main accused were builders who are already ordered to be released on regular bail by the Court of Magistrate and that being so, since the case of the applicants is on a higher pedestal, they are entitled for protection. Relying on the Judgments of the Apex Court

in the matter of **Sanjay Chandra Vs. CBI [AIR 2012 SC 830]** and **Siddharam Mhetre Vs. State of Maharashtra [(2011) 1 SCC (Cri) 514]**, the learned counsel submits that for search and seizure, the custodial interrogation is not warranted. The offence is based on the documentary evidence and that being so, applicants are entitled to be released.

5 *Per contra* the learned APP who is assisted by the learned counsel for the complainant opposed the prayer and submits that applicants have defrauded the parties like the complainant by pretending to be authorised representative. Applicants provoked Ex-Servicemen like complainant to book plots/row house and accepted the consideration out of their life saving and earning. The applicants as such have misused their position as an Ex-Servicemen, lured the parties like the complainant who are also an Ex-Servicemen and made them to invest in the project. It is claimed that participation of the applicants in the working of the company could be inferred from the evidence which is part and parcel of the investigation papers. As such rejection is sought.

6 Having considered rival submissions, it is not in dispute that applicants are/were Directors of the company namely Jupiter Infrastructures from which they claimed to have resigned from the company. Applicants have entered into Memorandum of Understanding with a private contractor as a representative of said Jupiter Infrastructures for carrying out development activity for the project in question and there from appears to be financially benefited. Considering the position of the applicants as Ex-servicemen, the Ex-Servicemen like complainant booked the apartment.

7 The aforesaid material viz. of being directors of the Jupiter Infrastructure company, their participation in the development project as a representative of the company, has prompted this Court to form an opinion that the applicants are the persons who are responsible for the decision making in the said company. Having accepted the offer complainant by granting booking of the apartment/house by by the applicants, it can be *prima facie* inferred

from the record, involvement of applicants in the transaction as alleged with responsibility to honour the agreement to deliver.

8 Apart from above no documents are placed on record so as to infer resignation by the applicants pursuant to provisions of Companies Act and the Rules framed there under.

9 In view of above, the claim of the applicants that they are not involved in the crime in question, and as such are entitled to be released on bail in the event of their arrest, claiming parity with main builder, cannot be accepted. It is made clear that the applicants are claiming parity with other co-accused who are released on regular bail. The *prima facie* conduct of the applicants as could be noticed from investigation papers is that of promoting the scheme and inviting the offers from prospective buyer for purchase of flats and acceptance of amount of consideration.

10 That being so, in my opinion, no case for bail is made out. Application fails, stands rejected.

11 At this stage, the learned counsel for the applicants submits that the Ad-interim protection ordered by this Court on 26/04/2018 to be continued for a period of 4 weeks.

12 The learned APP opposed the said submission, however, having regard the fact that applicants are Ex-Servicemen enjoying Ad-interim protection for last more than 9 months, it will be appropriate to continue the same as prayed. Hence, the Ad-interim protection is continued for a period of 4 weeks.

14 Applications and intervention applications stand disposed of.

[NITIN W. SAMBRE, J.]