IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLILCATION NO. 2868 OF 2018

Manoj Narshi Bhanushali … Applicant
Vs.
The State of Maharashtra … Respondent

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Mr. Dinesh Tiwari I/by Dinesh Tiwari & Associates for the applicant.
Mrs. G.P. Mulekar, APP for the Respondent-State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 10th JANUARY, 2019.

P.C.

1. This is an application for bail in connection with C.R. No. I-204 of 2017 registered with Bhiwandi Police Station for the offences punishable under Sections 406, 420, 465, 467, 468, 471 read with 34 of Indian Penal Code and Sections 3, 8 and 13 of the Maharashtra Ownership of Flats and Apartments Act, 1963. The applicant was arrested on 4th August, 2018.

2. The prosecution case is that in the month of September, 2013, the informant came to know about the building project named Shri Mahavir Patwa Developers and Constructions Private Limited in Bhiwandi through advertisement in newspaper. Informant made inquiry regarding the project and he was

informed that the project belong to and the construction is carried out by Rajesh Patwa. Applicant and others are partners of Project. On 21st October, 2013, the informant got acquainted with Rajesh Patwa when he alongwith his wife went to negotiate about Gala No. 23 type A/2 Wing 1, admeasuring 380 sq. ft in building known as Mahavir Shrusthi for consideration of Rs.13,30,000/-. The informant made part payment of Rs.1,30,000/- towards gala and receipt bearing No. 1906 was issued. Thereafter, informant at regular intervals paid amount to the tune of Rs.2,72,000/- to Mahavir Patwa Developers through bank via cheque. It is further alleged that informant went to book one more gala bearing No. 002 type A/4 wing on ground floor admeasuring 316 sq. ft for consideration of Rs. 10,11,200/- and he made part payment of Rs.1,30,000/- towards said Gala with co-accused in building named Galaxy and paid an amount of Rs.2,00,000/- as token amount to Mr. Bharat Bhanushali. Thereafter informant paid Rs.1,37,060/- towards registration of said two galas and also obtained receipts towards the same. Co-accused gave assurances and promises to give possession of Galas in two years, however, the possession was not given. FIR was lodged. During the investigation it was revealed that construction was initiated on the basis of bogus permission and documents and builder had accepted huge amount from prospective purchasers and failed to handover possession of flat within stipulated time. Accused did not execute agreements and cheated flat purchasers.

3. Applicant preferred an application for bail before the Sessions Court which was rejected on 12th October, 2018.

4. Learned advocate for the applicant submitted that there is no evidence against the applicant showing his active participation in the crime. Applicant was inducted as Director in 2013. The company was incorporated in 2009. The affairs of the Company were managed by Rajesh Patwa and the name of the company was M/s Patwa Mahavir Developers and Constructions Private Limited. Shri Rajesh Patwa inducted the applicant to be a Director. He had resigned as a Director of the said Company in February, 2017. Applicant has not misappropriated any amount. The applicant was not informed about prior dealings of the company. Applicant had entered into a Memorandum of Understanding dated 16th January, 2014. Nanji Bhanushali and Shantilal Cheda were added as Directors. Applicant relied on resignation letter and ROC extract. There are no documents purportedly executed by the applicant in relation to purchase of flats. No false representations were made

by the applicant. The statement of the witnesses recorded during the course of investigation did not show that applicant had collected any amount or had made any false assurance to the buyers of the flats. Applicant is in custody since 4th August, 2018. Investigation is completed and chargesheet has been filed. The case of the prosecution is that offences were committed from 2009-10 till 2017. Co-accused Patwa had orchestrated the entire crime. The applicant was in dispute with Mr. Rajesh Patwa, therefore, the applicant filed complaint to Sakinaka Police Station. There is no allegations of the applicant personally involved in any of the transactions. Applicant has been a person of financial background and all his assets have been accounted for. Applicant had no occasion to doubt intention of the co-accused. There is no reported illegality committed when the applicant was inducted as a Director. Applicant has demanded his dues from Mr. Rajesh Patwa who got furious and threatened the applicant that he will not make any payment. A written complainant to the respective police station was filed but no cognizance of his complaint was taken. Applicant alongwith Nanji Bhanushali and Mr. Shantilal Cheda filed a Criminal Writ Petition No. 2853 of 2017 before the High Court seeking direction for investigation. The said petition was disposed off on 28th August, 2017 with liberty to file a private complaint. Mr. Nanji Bhnushali filed a private complaint bearing No. 308/SW/2017 against Rajesh Patwa and others for offences punishable under Sections 420, 464, 465, 467, 468, 469, 471, 406, 409 and 120-B read with 34 of Indian Penal Code before the Learned Metropolitan Magistrate, 66th Court, Andheri, Mumbai. Applicant has also initiated Regular Civil Suit bearing No. 670 of 2017 before the Civil Court seeking recovery of his dues. The applicant was impleaded as an accused because he was shown as a Director in the records of the company.

5. Learned APP submitted that applicant is one of the Director of the said Company. There is sufficient evidence against him. The involvement of the applicant is disclosed during the course of investigation. Amount was transferred into his account. Huge amount was accepted by the accused. The offence is of serious nature. He is beneficiary of the transaction. The building was constructed on the basis of false documents and flats were sold to the purchasers. The bank statement indicate that amount is transferred into his account. It is therefore submitted that bail application be rejected.

6. Applicant is in custody from the date of arrest. Investigation

is completed and chargesheet is filed. Applicant was inducted as a Director in 2013 and he resigned from the Company in February, 2017. FIR was lodged on 21st September, 2017. The transaction which is subject matter of the prosecution was initiated in 2012. The applicant had executed Memorandum of Understanding dated 16th January, 2014 with Rajesh Patwa. In the said agreement, it is stated that due to shortage of working capital in business, the party of First Part (Rajesh Patwa) decided to run the business of development of project with the help of Party of Second Part as Financing Director for which the parties have agreed to by and between them on the terms and conditions. The primary role is not assigned to the applicant. The company was formed in 2009 and 2010 and applicant was inducted as Director in 2013. There is no evidence that the applicant is personally involved in any of the transaction such as communicating and misrepresenting the complainants and signing of any crucial documents including banking transaction or any of the decision making of the company. On account of dispute with Rajesh Patwa, private complaint was filed against him by Nanji Bhanushali. The applicants and others filed a Criminal Writ Petition seeking action against Rajesh Patwa. The applicant had resigned from the Company in 2017. The suit was filed against Rajesh Patwa. Some amount has been credited into the account of the applicant. The applicant at the most received an amount of Rs.3,00,000/- through R.T.G.S. The broucher of the company is issued at the instance of other accused. There are no statement indicating that the applicant had made false representation to the witnesses or collected the amount from the witness. The fact of receipt of amount of Rs.3,00,000/- is reflected in the chargesheet. Learned APP however, submitted that the applicant was signatory to Memorandum of Understanding executed between Shri Mahavir Patwa Developers and Construction Private Limited and Savariya Builders and in that regard amount of Rs.5 Crore was paid to the accused No.1 company. Learned counsel for the applicant however submitted that amount which was received was credited into the account of accused No.1 company. It is submitted that chargesheet indicates that the amount which was transferred is credited into the account of applicant to the tune of Rs.3,00,000/. Applicant is signatory and he is in custody since 4th August, 2018. Taking into consideration, the nature of the evidence against the applicant, the case for grant of bail is made out. Hence, I pass the following order.

ORDER

i) Criminal Bail Application No. 2868 of 2018 is allowed;

ii) The applicant is directed to be released on bail in connection with C.R. No. I-204 of 2017 registered with Economic Offences Wing, Thane Rural on furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount;

iii) The applicant is permitted to furnish cash security in the sum of Rs. 50,000/- for the period of four weeks from today;

iv) The applicant shall report Economic Offences Wing, Thane Rural once in a month on first Saturday between 10 a.m. to 12 noon till further order;

v) The applicant shall attend the trial Court on the date of hearing of the case unless exempted by the Court;

vi) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses;

vii) The application stands disposed off.

(PRAKASH D. NAIK, J.)