

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

**ANTICIPATORY BAIL APPLICATION NO.2099 OF 2016
WITH
APPP NO. 478 OF 2019**

Shrenik Siroya

..Applicant

Vs

1] The State of Maharashtra

2] Anil G. Shah

..Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO.2103 OF 2016
WITH
APPP NO. 477 OF 2019**

Fatesh Mirchandani

..Applicant

Vs

1] The State of Maharashtra

2] Anil G. Shah

..Respondents

Mr. Girish Kulkarni I/b V.B. Pandey for the Applicant in ABA 2099/2016.

Mr. Amin Solkar for the Applicant in ABA 2103/2019.

Ms. J.S. Lohokare, APP for the State.

Mr. Anil Shah-Respondent No.2 in ABA Nos.2099 and 2103 of 2016.

Mr. Ravi S. Kotian for Intervener in ABA No.2103 of 2016.

CORAM : A.S.GADKARI, J.

DATE : 30th April 2019.

P.C.:

1] Heard the learned counsel for the applicants, Mr. Anil Shah, Constituted Attorney of the first informant Shri Sunil Krishnan Anand and the learned APP. The Investigating Officer is absent despite specific oral directions issued by this Court on earlier occasion and therefore the record

of investigation is not produced before this Court.

2] By Orders dated 7th December 2016 and 9th December 2016 the applicants herein respectively were granted interim relief.

At the outset it is to be noted here that, by an Order dated 4th July 2018 both the anticipatory bail applications were dismissed for non-prosecution. The applications were restored by an Order dated 27th March 2019, however, interim relief granted by Orders dated 7th December 2016 and 9th December 2016 was not continued. The said fact is clearly mentioned in Order dated 27th March 2019. On 27th March 2019, it is specifically observed that, this Court has not restored the interim relief.

Despite the said fact, the Investigating Officer has not arrested the applicants herein till date. The aforesaid fact narrated hereinabove indicates sorry state of affairs in the investigation of present crime, which according to this Court requires attention of the Directorate General of Police, State of Maharashtra, for adopting appropriate remedial measures in that behalf, as per law.

3] The first information report dated 17th June 2016 is filed by Shri Anil Shah, Constituted Attorney of Shri Sunil Krishnan Anand.

The prosecution case in nutshell is that, the applicants being the

owners/ Directors of M/s Siroya FM Constructions Pvt. Ltd. agreed to sell flat No.501 in 'Orchid' building situated at Vile Parle (West), Juhu, Mumbai-400 049 and the first informant agreed to purchase it at a consideration of Rs.4,25,00,000/- (Rupees Four Crores Twenty Five Lakhs Only). Accordingly, the first informant paid an amount of Rs.4,25,00,000/- towards purchase of the said flat to the applicants and/or to their firm by way of bank transfers from 11.6.2008 to 2.8.2011. Despite making payment, till mid of 2015 the said building was not completed by the applicants. The applicants neither gave possession of the said flat nor returned the agreed amount to the first informant and in the premise the present crime is registered.

4] The learned counsel for the respective applicants submitted that, the applicants were and are ready to settle the matter with the first informant and are ready to give possession of Flat No.501 in the said building to the informant. The learned counsel for the applicants submitted that, in a suit filed by Ashok Shah & Anr. Vs. Siroya FM Constructions Pvt. Ltd bearing Commercial Arbitration (L) No.60 of 2016, the Co-ordinate Bench (Shri S.J. Kathawalla, J.) by its Order dated 21st July 2016 has appointed Court Receiver, High Court, Bombay in respect of unsold

property of the respondents i.e. Siroya FM Constructions Pvt. Ltd, the firm of the applicants herein. That the investigation of the present crime pertains to documents and therefore the custodial interrogation of the applicants is not necessary. The learned counsel for the applicants however fairly conceded to the letter dated 12th September 2014 addressed by the applicants admitting the receipt of entire consideration towards sale of Flat No.501 in 'Orchid' building. The learned counsel for the respective applicants prayed that, the applicants may be granted pre-arrest bail by allowing both the applications.

5] The first information report is self-eloquent. The fact i.e. the first informant has paid Rs.4,25,00,000/- (Rupees Four Crores Twenty Five Lakhs Only) to the applicants has been further reinforced by the receipts executed by the applicants and in particular a receipt/letter dated 12th September 2014 addressed by the applicants firm. The informant has paid huge amount to the applicants through bank transfers, details of which is mentioned in the first information report (Page No.47 of the application).

6] The applicants despite accepting the aforesaid huge amount from the informant have failed to give possession of the said flat No.501 to the informant to return the amount accepted by them. Today Mr. Anil

Shah, the Constituted Attorney of first informant submitted that, the said property i.e. Flat No.501 in Orchid building has already been sold to a third person namely Mr. B.Y. Chandak by the applicants. In support of his contention, he places on record the document pertaining to the sale of property to the said third person i.e. Mr. Chandak.

Thus it is clear that, the applicants with dishonest intention induced the informant to part with the said huge amount and caused him wrongful loss. The applicants thereafter defalcated the said amount and have also sold the flat in question to third party which further aggravates the crime.

7] There is another facet to the present case. The record indicates that on 22nd June 2017, the learned counsel for both the applicants on instructions made a statement before this Court that, the applicants herein are ready to return the entire sum of Rs.4,25,00,000/- to the complainant or are ready to hand over Flat No.601 in the very same building, provided the complainant pays the balance amount towards its consideration. That the applicants are ready to file an undertaking on the next date. It is to be noted here that, in last about two years the said statement is not adhered to by the applicants. The statement made on 22nd June 2017 on behalf of the

applicants was made by senior Advocates of this Court and undoubtedly their statements carry more weightage. The record indicates that, the said statements were not honoured by the applicants and subsequently, by Order dated 4th July 2018 both the applications were dismissed for non-prosecution.

8] As noted earlier, on 27th March 2019 it was categorically clarified that, interim relief granted in favour of the applicants was not restored by this Court. Despite the said fact, that since 4th July 2018 no interim relief was restored, the Investigating officer has not taken any pains to arrerst the applicants herein. It prima facie appears that, the applicants are well-connected and highly influential persons. It further appears that, the concerned Investigating Officer is conducting the investigation in a loath and lackadaisical manner, particularly after 4th July 2018 which requires the attention of the Directorate General of Police, State of Maharashtra in that behalf.

In view of the above, the Directorate General of Police, State of Maharashtra is hereby directed to look into the matter personally and take appropriate remedial measures in that behalf as noted in para No.2 hereinabove.

9] As noted earlier, the applicants despite accepting such huge amount from the first informant, neither gave possession of the agreed flat nor returned the accepted amount to the informant and has further sold the flat in question to third person which has aggravated the nature of present offence. The applicants have also shown scant respect to their own solemn statements made on 22nd June 2017.

Perusal of the entire record would indicate that, the applicants since inception were having intention to cheat the first informant and induced him to part with the said huge amount and after its receipt, have defalcated it.

10] In view of the above and after taking into consideration the gravity of offence and the serious allegations against them, this Court is of the opinion that, the applicants do not deserve to be protected by pre-arrest bail.

Both the applications are accordingly rejected.

11] In view of Order passed in A.B.A. Nos.2099 and 2103 of 2019, Criminal Application (APPP) Nos. 477 and 478 of 2019 do not survive and are accordingly disposed off.

12] The learned APP appearing in the present case is hereby directed to communicate this Order to the Director General of Police, Maharashtra State, by all possible mode.

(A.S.GADKARI, J.)