

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 286 OF 2020

1. Rohan Ramesh Arte
2. Ashwini Rohan Arte

...Applicants

Versus

The State of Maharashtra

...Respondent

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Mr. Muzaffer Y. Patel a/w. Vinaya S. Shetye a/w. Mr. Yogesh Palve,
Advocate for the Applicants.

Mr. H. J. Dedhia, APP for the Respondent – State.

Mr. Nilesh Bagade a/w. Mr. Sameer Y. Shaikh, Advocate for the
Intervenor.

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CORAM : PRAKASH D. NAIK, J.

DATE : 21st February, 2020

PC :

1. The applicants are apprehending arrest in connection with C.R. No. 243 of 2019, registered with Panvel City Police Station, Panvel for the offences punishable under Section 420 r/w. 34 of Indian Penal Code, 1860 ('IPC' for short) and Section 13 of Maharashtra Ownership of Flat Act, 1963 ('MOFA' for short).

2. The prosecution case is that, the complainant learnt about the upcoming project of Ashwini R. Construction Pvt. Ltd., namely Whispering Orchids. On reading advertisement, in Mumbai Mirror newspaper, the complainant intended to purchase plot and hence contacted company. Complainant visited the booking office.

They represented that, they are directors of the said company. They informed about the project Whispering Orchids Twin Bungalow and facilities to be provided. The complainant visited the site. They also stated that, bungalow possession would be given in December, 2016. Believing the representation of the applicants, booked one bungalow. Cheques were issued towards booking. The booking was also done in the name of her children. The promises were not fulfilled. The project development permission was not obtained. Several persons like complainant were cheated. Amount was not returned.

3. The First Information Report ('FIR' for short) was registered. Investigation proceeded. The applicants preferred an application for Anticipatory Bail before the Sessions Court. Interim protection granted to them by Order dated 20th June, 2019. However, the application was rejected by Order dated 28th January, 2020.

4. Learned Advocate for the applicants submitted that, due to economic policies and change in development rules, it is difficult for the applicants to start that project. More than 40 customers had booked bungalows for the proposed project. Amount have been refunded to 45 customers. At the same time, the applicants had assured the complainant about refund of token amount. However, FIR was lodged. There was no intention to cheat. The token amount

refunded to the complainant. The Investigating Officer instructed the banks to freeze the bank account of the applicants. The payments could not be made to the customers. The applicant No. 2 is wife of applicant No. 1. The applicants filed additional affidavit stating that, they started two projects viz. Purple City, Survey No. 6 Village-Sangtoli and Whispering Orchids at Village Nere. Amount were refunded to 45 persons. The intention of the company was genuine and the applicants have been working towards projects, which would be cleared due to efforts made by them for obtaining No Objection permission from the concerned Authority. The purchasers were informed in advance that, the applicants are in the process of obtaining permissions. Sale Deed was executed and the property was purchased upon which Whispering Orchids was to be constructed, which is registered. Purple City project was to be completed in three phases and booking was registered with MAHARERA. The company had received 197 bookings. Some of the bookings were cancelled. The reliance placed on documents of affidavit. It is submitted that, the permissions were sought from local Authorities. The custodial interrogation of the applicants is not necessary.

5. Learned APP submitted that, false promises were made to the purchaser of property. The applicants have cheated the complainant and other investors by accepting the booking amount.

They did not seek necessary permissions from the concerned department for the construction. By seeking permission, which handover the project in time, the applicants had misappropriated the funds and have only refunded part amount that too on the continuous insistence by the investors. It is submitted that, the property was purchased in 2019 and the amount was collected in 2015.

6. Learned Advocate for the Intervenor submitted that, the applicants had undertaken many other projects. False promises were made. Amount was accepted. Construction did not commence. Interest was not paid. The applicants had filed an undertaking before the Sessions Court that, the amount would be refunded to the persons, who had purchased the premises in other project. False promises were made. Custodial interrogation is necessary.

7. I have perused the documents, it appears that, the applicants had accepted the booking amount from the purchaser and published the brochure showing that, the project has been granted permission by concerned Authority. However, during investigation, it was revealed that, no permission was obtained. Learned Session Judge, while rejecting the application for Anticipatory Bail, has observed that, the offices shown in the address in the application,

have been closed and the applicants have diverted the booking by showing them another project. Learned APP tendered letter dated 21st June, 2019 addressed by Gram Panchayat, Nere to Economic Offence Wing ('EOW' for short), Navi Mumbai, stating that no application was received by Gram Panchayat, Nere for construction on Gat No. 225/2, Taluka-Panvel. No permission was granted in respect of any construction on the said plot. Learned APP also pointed out the letter dated 4th June, 2019 issued by City and Industrial Development Corporation of Maharashtra Limited ('CIDCO Ltd' for short) to EOW, Navi Mumbai stating that, no application is received, seeking construction permission till 20th June, 2019 in respect to plot at Gat No. 225/2 and no permission has been granted by the Authority. Office of Talathi had also forwarded letter dated 21st June, 2019 to EOW, Navi Mumbai stating that, the property at Survey No. 225/2 situated at Mouje Nere which is 26 Gunthas stands in the name of Kondiram Mandavkar and the said property has not been converted into 'Non-Agricultural' ('N.A.' for short) and determined that, 'Agricultural Land' till date.

8. Learned counsel for the Intervenor submitted that, assurances were given from time to time for resolving the dispute in respect of other project. However, promises were not fulfilled. The undertaking was not complied. Hence, although it is the claim of the

applicants that the amount is refunded to 45 persons. Considering the factual aspect, as stated above, thorough investigation is required to be conducted. The applicant No. 2 is wife of applicant No. 1. She is a lady. Interrogation would be common. Hence, applicant No. 2 need not be subjected to custodial interrogation. However, no relief granted to the applicant No. 1. His custodial interrogation is necessary. Hence, no case for grant of Anticipatory Bail is made out to the applicant No. 1.

9. Hence, I pass the following order:

ORDER

- i) Application of Applicant No. 1-Rohan Ramesh Arte stands rejected.
- ii) Applicant qua Applicant No. 2- Ashwini Rohan Arte, is allowed.
- iii) In the event of arrest of applicant No. 2- Ashwini Rohan Arte in C.R. No. 243 of 2019, registered with Panvel City Police Station, Panvel the applicant be released on bail on furnishing P. R. Bond in the sum of Rs. 25000/-(Rupees Twenty Five Thousand), with one or more sureties in the like amount;

- iv) The applicant No. 2 shall attend Investigating Officer on 4th March, 2020 to 6th March, 2020 between 11.00 a.m. to 1.00 p.m.
- v) Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)