IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1185 OF 2019

Sanjay Kamlakar Govari .. Applicant

Vs.

The State Of Maharashtra .. Respondent

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Mr. Karansingh Rajput a/w Amarnath S. Boddul, Advocate for Applicant.
Mrs. Aarti Takalkar, A.P.P. for the State-Respondent.
Mr. Krishna Baban Mekhale, API, EOW,-II, Navi Mumbai, Present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 13th JANUARY 2020

PC.

1 The Applicant is arrested in C. R. No. 94 of 2017 registered on 22nd July 2017 with Kamothe Police Station, Navi-Mumbai, for the offences punishable under Sections 420, 406 read with 34 of Indian Penal Code (for short "IPC"), as well as Section 13 of Maharashtra Ownership of Flats Act, 1963 (for short "MOFA"). The Applicant is accused no. 2. He is arrested on 29th June 2018. The complaint was lodged by Yogesh Prabhakar Salunke.

2 The prosecution case in short is that, the complainant wanted to purchase a flat at Panvel. He came to know about the project M/s. Khyatiraj Devcon Private Limited. The complainant visited office of developer at Kamothe, Panvel on 12th April 2015. The complainant met Rajwardhan Tulshiram Patil, Director of the said Company. The said accused informed him that, Smt. Ujwala Sachin Shinde is the Director of the Company and the Applicant is partner of M/s. Khyatiraj Builders and Developers. The Applicant and his wife Ranjana Govari had given their land situated at Shivkar village, Survey No. 304, Tal-Panvel, Dist. Raigad for development vide development agreement dated 09th August 2013 to the Company. He further represented that, if the complainant books the flat in the said project and there will be good returns. He also informed that, all necessary permissions have been obtained from concern authorities and the project would be completed within two years and possession would be handed over to purchasers. Accordingly complainant agreed to purchase the flat from accused for the consideration of Rs.5,62,500/-(Rupees Five Lakhs Sixty Two Thousand and Five Hundred Only). He paid booking amount/advance of Rs.56,250/- receipt was issued to him. However, agreement was not

executed. The complainant visited office of the M/s. Khyatiraj Devcon Private Limited and met accused Rajwardhan Patil, Smt. Ujwala Shinde and Applicant and inquired about commencement of project, however, all the accused gave evasive answers. The complainant demanded return of money from the accused. The amount was not refunded. Possession was not given. When the complainant visited office of accused, several persons were visiting the office and making inquiry about the project. Those persons had also booked flats and deceived by accused. Investigation proceeded. During the course of investigation, Applicant was arrested and charge-sheet is filed against arrested accused.

3 The Applicant had preferred an application for bail before the Learned Sessions Court which has been rejected.

4 Learned counsel for the Advocate submitted that, it is the case of the prosecution that, the Applicant was Director of M/s. Khyatiraj Devcon Private Limited. The said Company had initiated the development plan wherein investors were invited to purchase flat and make investments on Lucrative offers whereas, the investigation conducted by the police reveals that, the

Applicant was never the Director in the said Company nor he participated in the transactions related to the said Company. The projection of the Applicant as partner of said concern is misconstrued. The Applicant had formed a partnership firm with accused Rajwardhan Patil by a registered Deed of Partnership dated 02nd April, 2013 whereby, they had agreed to carry on business of construction. The Deed of Partnership was never acted upon as no project was initiated under the name of the said partnership firm. The confusion is on account of similar name of said partnership. The Applicant is the owner of property upon which the scheme of construction was to be developed and in the capacity of owner of the property, the development agreement was executed between M/s. Khyatiraj Builders and Developers and Applicant along with his wife on 09th August 2013. It was agreed between the parties that, all requisite permissions were to be obtained by accused no.3 including building plan, sanctions etc. and after completion of the project 50% of the constructed area was to be given to the Applicant. It is nowhere reflected in the agreement that, the Applicant had participated in any constructions activities to be carried out by other accused. The accused Ujwala Sachin Shinde who was the Director in the

Company has been granted bail. The agreement was terminated. Amount of Rs. 3,42,60,000/- was returned to M/s. Khyatiraj Builders and Developers. Reliance is placed on Bank Statement of Ranjana Gowari. The entire money received from the flat purchasers was remitted to the account maintained in the name of the Company which was operated by accused who was the beneficiary. It is submitted that, the statements of flat purchasers / investors recorded by the Investigating Agency revealed that, the Applicant never confronted them nor had persuaded them to invest in the proposed development project. The amount collected from purchasers / investors were credited into the account of the Company and not the partnership firm where the Applicant was a partner. As per agreement dated 09th April 2013, the Applicant was to accrue certain benefits only after completion of the project. The accused Rajwardhan Patil was granted interim protection in the application for Anticipatory Bail preferred by him and he was enjoying the protection since long. At his instance, it was contended that, amout of Rs. 5 crores has been refunded to investors. He was subsequently arrested. It is submitted that, the development agreement is a registered documents which attribute limited role to the Applicant of the land owner. The offences are triable before the Court of Magistrate. The cheques were signed by co-accused. The Applicant is in custody since last one and half year.

5 Learned APP submitted that, Applicant and his wife have executed development agreement on 09th August 2013. The Applicant has accepted money. The Applicant has executed MOU as 50% partner for M/s. Khyatiraj Devcon Pvt. Ltd. on 2nd April 2013 with Rajwardhan Patil which has been recovered during investigation. It is submitted that, several purchasers / investors were cheated by the accused. The Applicant had accepted Rs.40,00,000/- for own purpose including Rs.3,00,000/-, the Investigation Agency revealed that, the involvement of the Applicant. The accused had collected the amount from flat purchasers without executing legal agreement and concealing the fact that, permissions are not obtained from concerned authority for constructions. The witnesses have stated that, accused promised that construction of the project would commence shortly. However, the promise were found to be false. The Applicant is also involved in C. R. No. 69 of 2017 registered with Kamothe Police Station. Vaibhav Dilip Raskar in statement

dated 12th June 2018, stated that, he met accused including Applicant on several occasions to inquire about the project. The complainant has stated that, he met Rajwardhan Tulshiram Patil Director of M/s. Khyatiraj Devcon Private Limited. He was informed by Rajwardhan Patil that Smt. Ujwala Sachin Shinde is Director and the Applicant is partner of M/s. Khyatiraj Builders and Developers. Partnership Deed dated 02nd April 2013 executed between Rajwardhan Patil and Applicant was executed and the partnership business was carried out in name of Khyatiraj Devcon Pvt. Ltd.

6 I have perused the documents on record. On completing investigation, charge-sheet has been filed. The First Information Report was lodged on 22nd July 2017. The Applicant was arrested on 29th June 2018.

7 The prosecution case is that, several purchasers/ investors of premises were deceived by the accused. According to prosecution, the Applicant was concerned with the transactions and acted in connivance with the co-accused. The Applicant is the owner of the property upon which the scheme of constructions of development and in the capacity as owner of the

property. Agreement was executed between M/s Khyatiraj Builders and Developers and the Applicant along with his wife on 09th August 2013. The said agreement mentions that, the property mentioned therein is owned by the Applicant and his wife and it is agreed that, the said property is to be developed. In clause-1 of the said agreement, it is mentioned that, for developing the said property requisite permissions from Town Planning Department, District Collector, Alibaug-Raigad, CIDCO, Naina Grampanchayat is to be obtained and after obtaining requisite permissions, the building plan is to be submitted and the developer shall provide the 50% of the premises in habitable conditions to the owner of the property. The contention of the Applicant is that, in view of the said clause, the developer was required to obtain necessary permissions and construct building since the Applicant and wife of the owner, they were beneficiaries to 50 % of the construction as mentioned in the agreement. The Applicant is not partner or proprietor of M/s Khyatiraj Builders and Developers. The complainant Yogesh Prabhakar Salunke had forwarded complaint to DCP Crime Branch, Navi Mumbai on 14th March, 2017 in which it was alleged that, on 12st April 2015, he wanted to purchase house and he was in search of premises. He learnt that, booking of flat constructed by M/s Khyatiraj Builders and Developers is in progress. He read the advertisement and approached the office of the said builder. He was informed by Rajwardhan Tulshiram Patil that he along with the Applicant would be developing the property. The Applicant was not present, while the said representation was made to the complainant. In FIR it is alleged that, complainant was informed by Rajwardhan Tulshiram Patil that, the project will be completed by him along with Applicant. The learned counsel for the Applicant had contended that, the Applicant has not received any amount collected from the investors / purchasers. It is pertinent to note that, accused no. 3 Ujwala Sachin Shinde had preferred an application for bail before the Sessions Court wherein she was granted bail by order dated 08th December 2017. While granting bail, it was observed that, assuming that, it is case of economic offence, the object of Criminal prosecution is to protect investors and help them to recover money. It is further observed that detention of said accused would not aid recovery. Rajwardhan Tulshiram Patil had preferred an application for Anticipatory Bail before this Court. It was contended on his behalf that, amount of Rs. 5 crores will be refunded to investors. In order dated 16th October 2018 it is observed by this Court that, the said Applicant accused had stated that, 5 crores are refunded to investors and he needs time to repay balance amount. However subsequently, the said application was withdrawn on 06th February 2019. Learned counsel relied upon bank statements and submitted that the amount of Rs. 3,42,60,000/- was refunded to M/s Khyatiraj Builders and Developers. It is also submitted that, development agreement was terminated. The Partnership Deed was apparently not acted upon. There is nothing to show that, the investment of 14 investors was made with Applicant.

8 Applicant is the land owner, he was to get 50% totally constructed area from his own land. He is not party to any agreement with flat purchasers. The Development agreement was executed between M/s. Khyatiraj Builders and Developers though Tulshiram Patil and Applicant along with his wife. The agreement for purchase of flat were executed with M/s. Khyatiraj Devcon Pvt. Ltd. which is a Company. There is nothing to show that, Applicant is Director of said Company. The receipts were issued by said Company. There is certificate of incorporation of

said Company on record having incorporated on 29th November 2013. The partnership bearing similar name was executed between Applicant and Tulshiram Patil. The prosecution is also relying on MOU. According to Applicant the said Partnership Deed was no acted upon. Nothing to show that any amount is credited into account of Applicant, which was collected from investors.

9 The Applicant is in custody from the date of arrest. In the light of the aforesaid factual aspects further detention of the Applicant is not necessary, case for grant of bail is made out.

:: <u>ORDER</u> ::

i) Bail Application No. 1185 of 2019, is allowed;

ii) The Applicant is directed to be released on bail in connection with C. R. No. 94 of 2017 registered with Kamothe Police Station, Navi Mumbai, he be released on bail on his executing P. R. Bond in the sum of Rs. 50,000/-, with one or more sureties in the like amount;

iii) Applicant shall attend the investigating officer of

Kamothe Police Station, Navi Mumbai, once in the month on first Saturday of the month between 10:00 a.m. To 12:00 noon, till the conclusion of trial;

iv) Applicant shall not tamper with the evidence;

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

vi) Bail Application stands disposed of accordingly.

(**PRAKASH D. NAIK, J.)**