

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

BAIL APPLICATION NO. 1188 OF 2019

Sanjay Kamlakar Govari

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

.....

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. 92 of 2017 registered with Kamothe Police Station, Navi-Mumbai, for the offences punishable under Sections 420, 406 read with 34 of Indian Penal Code (for short "IPC"), and Sections 4(1) and 13(1) of Maharashtra Ownership of Flats Act, 1963 (for short "MOFA Act") and Section 3 of The Maharashtra Protection of Interest of Depositors Act (for short "MPID Act").

2 The complaint was lodged by Rahul Pandit Hulge on 20th July 2017 alleging that, he intended to purchase house. He

learnt that construction is likely to be carried out by M/s. Khyatiraj Devcon Private Limited at Survey No. 718, Hissa No. 3+4+5, Panvel for residential building. On 22nd October 2014, the complainant visited the office of the Company. He met Director of M/s. Khyatiraj Devcon Private Limited Shri. Rajwardhan Tulshiram Patil. He told him that he along with Ujwala Sachin Shinde are Directors of M/s. Khyatiraj Devcon Private Limited. He also informed that Sanjay Govari is a partner of M/s. Khyatiraj Devcon Private Limited had executed development agreement to develop flat bearing survey No. 718, Hissa No. 3+4+5 owned by Sanjay Govari and his wife Ranjana Govari. The complainant was informed that the project will be completed and possession of the premises will be given in two years. The complainant visited the spot. Board of M/s. Khyatiraj Builders and Developers was displayed at the site. The flat was sold at the rate of Rs. 4000/- per square metre. The complainant paid Rs. 1,05,000/- as advance by cheque. Thereafter, the complainant visited at the site on several occasions and noted that, construction had not commenced. He also met Rajwardhan Patil, Ujwala Shinde and Applicant on several occasions and inquired about construction. The accused gave evasive answers.

The amount of booking was not returned to him. Hence, the First Information Report was lodged.

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

4 Learned counsel for the Applicant 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 accused no. 3 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 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 accused no.3. The accused Ujwala Sachin Shinde who was the Director in the Company has been granted bail. The entire money received from the flat purchasers were remitted to the account maintained in the name of the Company which was operated by accused no.1 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 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, amount 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 as the land owner. The cheque was signed by accused No. 2.

5 Learned APP submitted that, the Applicant and his wife have executed development agreement on 9th August 2013. The Applicant accepted money. It is submitted that, several purchasers / investors were cheated by the accused. The Applicant has executed MOU as 50% partner of M/s. Khyatiraj Devcon Private Limited on 2nd April 2013 with Rajwardhan Patil. The accused concealed the fact that, permissions were 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 was found to be false. The Applicant is also involved in C. R. No. 69 of 2017 registered with Kamothe Police Station and other

cases. 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. The prosecution has filed affidavit to oppose application for bail.

6 I have perused the documents on record. On completing investigation, charge-sheet has been filed. The First Information Report was lodged on 20th 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. It is the case of prosecution that, the Applicant was Director of M/s. Khyatiraj Devcon Private Limited. The Applicant's contention is that, he was partner with original accused no. 3 and in accordance with Deed of Partnership dated 02nd April 2013. 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 the proprietors with accused no. 3 namely M/s Khyatiraj Builders and Developers and

the Applicant along with his wife on 09th August 2013.

8 I have perused the development agreement executed between M/s Khyatiraj Builders and Developers through proprietor Rajwardhan Tulshiram Patil and Applicant along with his wife. 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 50% of the premises in habitable conditions to the owner of 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. It appears that, the Applicant has not played role in construction. The Applicant is not partner or proprietorship of M/s Khyatiraj Builders and Developers. He

learnt that, booking of flat constructed by M/s Khyatiraj Builders and Developers is in progress. He read the advertisement and approached the officer of the said builder. He was represented that, by Rajwardhan Tulshiram Patil that he along with the Applicant would be developing the property. The Applicant was not present, while the said representation made by the complainant was informed by Rajwardhan Tulshiram Patil of M/s Khyatiraj Builders and Developers 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. While granting bail, it was observed that, detention of 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 is to be refunded to investors. In order dated 16th October 2018 it is observed that, the said Applicant stated that 5 crores are refunded to investors and he needs time to repay balance amount. Subsequently, the said

application was withdrawn on 06th February 2019. Learned counsel relied upon bank statements and submitted that the amount of Rs. 3,42,00,600/- 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.

9 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 not acted upon. Nothing to show that any amount is credited into account of Applicant, which was collected from investors.

10 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.

:: ORDER ::

- i) Bail Application No. 1188 of 2019, is allowed;
- ii) The Applicant is directed to be released on bail in connection with C. R. No. 92 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.)