IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2311 OF 2018

1. Prakash Jibhai Barot
2. Umesh Parshuram Rao ….Applicants

V/s.

The State of Maharashtra ….Respondent

Mr. Niranjan Mundargi a/w. Ashwin R. Rana for the Applicants.
Smt. A. A. Takalkar, APP, for Respondent-State.
Mr. Harshad Bhadbade i/b. Sophia Pinto for the Respondent No.2.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st February, 2020

P.C.:

1. This is an application for Anticipatory Bail. The applicants apprehend arrest in C.R.No.346 of 2018 registered with Juhu Police Station, Mumbai, for offences punishable under Sections 406, 420 of Indian Penal Code ("IPC" for short) and Section 13 of Maharashtra Ownership of Flats Act ("MOFA" for short).

2. The complainant has alleged that, he has company namely Etco Group of Company Private Ltd. The company deals with purchase and sale of shares, share transactions, deposits etc. In

2007, he was introduced to applicant No.1 through Kishor Patel. The applicant No.1 was Managing Director of Zenal Construction Private Ltd. who is a developer. The complainant had invested in two projects with him. In 2011, the complainant told the applicant No.1 that he intends to purchase duplex flat on the upper floor of the building. The applicant No.1 told him that redevelopment project of the applicant No.1 is in progress at survey No.202/6 Vile Parle West Andheri. He would construct a duplex flat on the top floor of the building. He also represented that the project is being operated in partnership with Dipen Shah and Pravin Shah. The construction would be completed by December 2012 and the possession would be handed over. He gave proposal of flat admeasuring 2000 Square feet in Krishna Tower on the top floor Nos.9 and 10 with a duplex flat, open parking and stilt parking etc. The complainant was influenced by the proposal and agreed to purchase the premises. He was informed that the price of the duplex flat is Rs.4,02,00,000/-. Since complainant was interested in duplex flat on the top floor and representation was made that the possession would be handed over by December 2012, He liked the deal. The complainant applied for loan with Andhra Bank, Mahim, registered sale dead agreement was executed between the complainant and Zenal Jainam Developers for purchase of flat on 16th June 2011. The complainant gave an amount of Rs.1,44,22,600/- to the accused. The complainant did not receive the possession of the flat till December 2012. When inquiry was made about it, the accused gave assurance. It was promised that the possession would be given by 2015. It was also stated that, new rules are applied for getting fungible FSI. The complainant did not receive the possession of flat. The complainant made an application under the Right to Information Act to the corporation in 2016 and he learnt that corporation has cancelled the revised plan on 03rd March 2014 on the objection of Society members. He also came to know that members of Society published a notice in the newspaper on 15th March 2017, disclosing that society has cancelled the power of attorney as given to the company. The complainant realized that, he was deceived. The complainant had parted of Rs.3,44,22,600/-. The accused thereafter took a stand that flat was never sold to the complainant.

3. The applicants had preferred an application for Anticipatory Bail before the Sessions Court at Dindoshi. The application was rejected by order dated 25th October 2018.

4. Learned Advocate for the applicants submitted that the First Information Report is false. No offences are made out against the applicants. Custodial interrogation of the applicants is not

necessary. The applicants have co-operated with the investigation. Identical case was registered against the applicants in which Anticipatory Bail was granted to the applicants. The learned counsel relied upon the order dated 17th November 2016 passed by this Court in Anticipatory Bail Application No.1253 of 2016 granting pre-arrest bail in connection with C.R.No.269 of 2016 for the offences punishable under Sections 420, 406 r/w 34 of IPC and Section 13(1) of MOFA Act. It is submitted that the present FIR is identical. The complainant is an investor. The dispute is of civil nature. The agreement was executed between the applicants and informant but money was parted by way of investment. It is submitted that the informant has represented his financial difficulty and requested to applicant No.1 for short term loan of Rs.2,00,00,000/- as he was interested in buying duplex flat from the applicant company. Applicant No.1 had granted loan and paid Rs.1,72,25,000/- to M/s. Shambhavsole Enterprises Private Ltd. under instructions of complainant wherein he was director. The applicants had requested the informant to return the amount. The complainant has suppressed the fact that, he filed a Commercial Suit wherein the informant is plaintiff No.1.

5. Learned APP submitted that the offence is of serious nature.

The complainant has been cheated by the applicants. Both are involved in deceiving the complainant. The application for Anticipatory Bail preferred by the applicants in connection with C.R.No.93 of 2018 registered with E.O.W Unit-X, Mumbai was rejected by this Court by order dated 17th January 2019.

6. Learned Advocate for the intervener supported the submission of learned APP, it is submitted that applicants have not deposited amount which is received. If it is only an investment, the property would not have been identified. The agreement would not have been registered. Building is not completed. There is no whisper about returning money. The complainant has filed affidavit in reply opposing application for Anticipatory Bail.

7. I have perused the First Information Report and documents on record. It is alleged that the accused have taken the amount from the complainant for duplex flat. The said amount has not been refunded. The possession of the premises is not given. The complainant came to know that revised plans submitted by the applicants were already cancelled by the corporation. The power of attorney given by the Society has been cancelled by the members of Society. Prima facie case is made out against the applicants. The report of the police opposing application for Anticipatory Bail before

the Sessions Court mentions that the complainant had given Rs.2,00,00,000/- by obtaining loan from Andhra Bank. The amount was credited into the account of Zeanal Jainad Developers. C.R. No.269 of 2016 is registered against the applicant No.1 under Sections 406, 420 r/w. 34 of IPC and C.R.No.455 of 2017 is also registered against him under Section 420 r/w. 34 of IPC. The accused have obtained amount of Rs.3,44,22,600/- from the complainant and investigation is required to be conducted as to how amount is routed and misappropriated The amount is not returned nor the premises is handed over to the complainant. Thus, prima facie there is sufficient evidence to show the involvement of the applicants. No case for grant of anticipatory bail is made out.

ORDER

(i) Anticipatory Bail Application No.2311 of 2018 is rejected.

(ii) At this stage, learned counsel for applicant seeks extension of interim relief granted by this court, to consider, approaching higher court for relief. Learned APP and learned Advocate for intervener opposed the prayer. Since applicant was granted interim protection on 02.11.2018, the same is extended for three week.

(PRAKASH D. NAIK, J.)