

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

CRIMINAL BAIL APPLICATION NO.203 OF 2020

Mahesh Chimanlal Shah

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.S.V. Marwadi i/b. N.M. Nadar, Advocate for Applicant.
- Mr.Ajay Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 30th APRIL, 2021

(through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.179/2019 registered with Manor Police Station, Palghar, dated 31/10/2018, under sections 420 r/w 34 of the Indian Penal Code, under sections 3 and 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) (MPID) Act, 1999 and under sections 4, 5, 8 and 13 of Maharashtra Ownership of Flats Act. The Applicant was arrested on 19/04/2019 and since then he is in custody. Investigation is over and the charge-sheet is filed.

2. Heard Mr.S.V. Marwadi, learned counsel for the Applicant and Mr.Ajay Patil, learned APP for the State.
3. The prosecution case as mentioned in the charge-sheet is as follows:

The FIR was lodged by one Sunil Vasudev Mordani. There are allegations made by the first informant and other witnesses against the Applicant. The gist of the allegations are that, the Applicant and his partner had collected money from various people for giving them row houses. The charge-sheet mentions that various amounts were collected from different people. The first informant had paid Rs.23 lakhs. Besides him there were 18 other persons, from whom amounts were collected. In all Rs.4,20,79,050/- were collected. But the construction was not completed and the row houses were not handed over to all these victims, thereby depriving them of their money. There are allegations that row houses Nos.30 and 31 were sold to two persons. On this basis, charge-sheet was filed. The charge-sheet mentions that the other accused Deepak Soni had absconded and was not found.

4. Learned counsel Mr.Marwadi submitted that the Applicant never had dishonest intention. He genuinely made efforts to complete the project. He submitted that Rs.1,20,00,000/- were given to the owner of the land. He had spent about Rs.11 lakhs on stamp duty. Besides that, he had spent Rs.80 lakhs for miscellaneous purposes and for maintaining his office etc. He had actually spend Rs.1,87,00,000/- for making construction. Mr.Marwadi relied on the photograph at page No.95 which shows that that construction had progressed considerably. He submitted that only because of shortage of funds and unforeseen genuine difficulties, the project could not be completed. Mr.Marwadi submitted that the Applicant has all the intention to complete the project and he shall make genuine efforts in that behalf.

5. Learned APP opposed this application. He submitted that 19 people were cheated by the Applicant and they were deprived of their hard earned money. He therefore submitted

that the offence is made out. The offence is serious and the Applicant does not deserve to be released on bail.

6. I have considered these submissions and with assistance of both the learned counsel I have perused the charge-sheet, which is annexed to this application.

7. The FIR is lodged by Sunil Mordani as mentioned earlier. He has mentioned that he had paid different amounts since year 2015 and in all he had paid Rs.23 lakhs. The row house was to be completed by December 2015. In August 2015 when the informant went to the site of construction he found that the construction was not completed. He pursued the matter with the Applicant and his partner. The accused had not even paid interest as promised for the delayed possession. On this basis, FIR is lodged.

8. The statements of various victims are more or less on the same lines. They pertain to different amounts. Those victims are Saroj Vishwakarma who had paid Rs.15 lakhs. Kishor Tak

had paid more than Rs.7 lakhs. His row house was constructed upto 75% and then it had remained incomplete. Meena Pithadiya had paid Rs.11 lakhs. There were other victims namely Sangita Shah, Rita Gosar, Sadanand Angadikar etc. Undoubtedly, all the victims had made payment and they were not given possession as promised. The question is whether the Applicant had dishonest intention and whether he had misappropriated this amount. This question will have to be answered from the material in the charge-sheet.

9. The charge-sheet contains various permissions sought for by the Applicant and owners and which were actually granted by the authorities. The charge-sheet contains the document dated 17/05/2012, by which, the original owners Salim Suleman Dhara and Asma Salim Dhara were granted permission to convert the land bearing Gut No.31 admeasuring 7200 sq.meters into non-agricultural land. On 18/10/2012 Grampanchayat Tene, had granted permission for construction. There is an extract of minutes of meeting dated 24/07/2013,

where permission for construction was granted. Then there was similar permission dated 29/07/2013. This all shows that the Applicant's firm had obtained permission from the authorities to make construction on that particular site. The statement of the original owner Asma Dhara also shows that the Applicant and his partner had entered into development agreement with the owners on 13/08/2012 in respect of making construction of Gut No.31/A at Takvahal.

10. Mr.Marwadi submitted that the land bearing Gut No.31/A at Takvahal comes within jurisdiction of Grampanchayat, Tene. Asma has further stated that the development agreement was for four years and it came to an end in the year 2016. Thereafter the land is in her possession. She did not have any complaint against the present Applicant and his partner. All these aspects go to show that the project by itself was not fraudulent. The Applicant did not have any dishonest intention. All the permissions were sought and obtained. Development agreement was already executed and the

Architect's certificate at page No.357 of this application also shows that construction had progressed quite substantially.

11. Therefore there is substance in Mr.Marwadi's submissions that the Applicant had made genuine efforts to complete the construction. As far as the allegations in respect of the row house No.30 and 31 are concerned, Mr.Marwadi submitted that allotment letter was given to one party only by way of security and the transactions could not go through. Therefore those row houses were subsequently sold to different parties and even in those instances there was nothing fraudulent.

12. Considering all these aspects of the matter, the Applicant has made out a case for his release on bail. Applicant is in custody since 19/04/2019. The investigation is over and the charge-sheet is already filed. The Applicant is a heart patient. The Court had repeatedly called report from the jail authority. But for one reason or the other, the report is not

brought before the Court. Therefore even on that aspect the contention of the Applicant about his poor health is not really controverted. The Applicant is 67 years of age. No further purpose will be served by keeping him behind bars. The trial is not likely to commence in near future. Therefore the Applicant has made out a case for his release on bail.

13. Hence, the following order :

ORDER

- (i) In connection with C.R.No.179/2019 registered with Manor Police Station, Palghar, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one or two sureties in the like amount.
- (ii) The Applicant shall deposit his passport, if any, with the Investigating Officer, before his actual release on bail.
- (iii) Application is disposed of.

(SARANG V. KOTWAL, J.)