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

ANTICIPATORY BAIL APPLICATION NO.161/2020

MAHESH KANTILAL SHAH ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
ANTICIPATORY BAIL APPLICATION NO.162/2020**

VINOD KANTILAL SHAH ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
ANTICIPATORY BAIL APPLICATION NO.163/2020**

HARESH JIVANDAS MATANI ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
ANTICIPATORY BAIL APPLICATION NO.164/2020**

RAJENDRA MATHURADAS DANTHI ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Shashikant Choudhari a/w. Snehal Choudhari for
applicants.

Mr. N.B. Patil for the State.

Mr. H.B. Takke for respondent No.2 -intervener.

Mr. S. Jadhav, PSI, Charkop Police Station.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 6, 2021

P.C. :

Heard Mr. Chaudhari, learned counsel appearing for the applicants, Mr. Patil, learned APP appearing for the respondent No.1 - State and Mr. Takke, learned counsel appearing for the respondent no.2 – intervener.

2. The offence alleged is under sub-section (1) of Section 13 of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as 'the said Act' for short). The First Information Report (FIR) in respect of such offence was filed on 8/2/2019 by the respondent no.2. The respondent no.2 is a flat purchaser in respect of Unit-12 of Building No.'B'. The allegation is that the promoters – applicants developed the land which is the subject matter of the layout on which three buildings viz. 'A', 'B' and 'C' are standing and agreed to convey the entire layout in favour of the society on which buildings viz. 'A', 'B' and 'C' stand. The society was formed by the flat purchasers on 12/7/2002.

3. It is the allegation of the flat purchaser that the applicants have failed to convey the land in favour of the

society as agreed in terms of the flat purchasers agreement and hence contravened the provisions of Section 13 (1) of the said Act. It is further the case that in respect of the portion of the road passing towards the municipal garden being a part of the layout which was to be conveyed to the society, the applicants have sold the portion of the said road in favour of third persons in contravention of the flat purchasers agreement. It is further the allegation that the developers failed to construct and hand over amenities like club house. For all these reasons the FIR is filed by the respondent no.2.

4. Section 13 (1) of the said Act provides that any promoter who, without reasonable excuse, fails to comply with or contravenes, the provisions of sections 3, 4, 5, 10 or 11 shall, on conviction be, punished with imprisonment for a term which may extend to three years or with fine, or with both.

5. In the present case, it is alleged that the promoter has contravened the provisions of Section 11 of the said Act. Learned counsel for the respondent no.2 submitted that the

promoter has contravened the provisions of sub-section (3) of Section 11 of the said Act as there has been failure on his part to execute a conveyance in favour of the co-operative society in terms of the flat purchasers agreements.

6. I find that under the provisions of Section 11 of the said Act, it is open for the flat purchasers to apply for unilateral deemed conveyance in their favour. Accordingly, in respect of building 'A' an application was made before the competent authority for deemed conveyance. It is informed that the said application came to be rejected on 30/9/2021.

7. So far as Buildings 'B' and 'C' are concerned, no such application has been made under Section 11 of the said Act before the competent authority for grant of deemed conveyance.

8. It is further pointed out and there is no dispute that the suit was filed by the society against the promoters and M/s. Patil Brothers in whose favour the promoters had conveyed a portion of the land in respect of the road which according to the society belongs to them. It is pointed out that the said suit was dismissed for default on 26/4/2010.

The allegation of the respondent no.2 is that the promoter failed to execute the conveyance in favour of the society under Section 11 (3) which has thus resulted in an offence under Section 13 (1) of the said Act.

9. Learned APP pointed out that some of the applicants have reported to the investigating officer along with necessary documents and investigation is on going. However, nothing has been placed on record or pointed out by the respondent no.1 as to why the custodial interrogation of the applicants is required in the present facts. It is not the case that the applicants are not co-operating with the investigation. As stated earlier subsection (1) of Section 13 provides that any promoter who, without reasonable excuse, fails to comply with or contravenes, the provisions of sections 3, 4, 5, 10 or 11 shall, on conviction be, punished with imprisonment for a term which may extend to three years or with fine, or with both. In this view of the matter, I am satisfied that this is a fit case for grant of pre-arrest bail to the applicants.

10. The applicants are protected by an interim protection

order passed by this Court on 22/1/2020 and which has been continued from time to time. Hence the following order.

ORDER

(I) Interim order dated 22/1/2020 passed by this Court stands confirmed.

(II) In the event of arrest of the applicants in FIR LAC No. 25/2019 registered with Charkop Police Station, they shall be released on furnishing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one or two sureties in the like sum.

(III) The applicants shall report to the investigating officer on 10th, 13th and 15th December, 2021 between 11.00 a.m. and 1.00 p.m. and thereafter as and when called.

(IV) The applicants shall furnish the particulars of their place of residence and contact details to the investigating officer of the Police Station concerned within seven days from today.

(V) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

(VI) All applications are disposed of.

11. It is made clear that the observations made herein are limited to deciding the present applications for pre-arrest bail and without prejudice to the rights and contentions of either of the parties at the time of trial or will not preclude the parties from resorting to such other remedies available in law.

(M.S.KARNIK, J.)