

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

ANTICIPATORY BAIL APPLICATION NO.365 OF 2019

Mr. Motilal Maikulal Gupta & Anr., Applicant

Vs.

The State of Maharashtra Respondents

Mr. Rohan Surve i/by Kadar Solanky for Applicant.

Ms. Sharmila S. Kaushik, APP for State.

API, Mr. Santosh Shete, EOW-1, Navi Mumbai

Coram : NITIN W. SAMBRE, J.

Date : 23rd JULY, 2021

P.C.:

1. Both the applicants are seeking pre-arrest bail in Crime No. 234 of 2018 registered on 1st December, 2018 with CBD Belapur/Khargar Police Station, for an offence punishable under Sections 420, 406 read with 34 of Indian Penal Code read with Sections 3,4 and 13 of MOFA Act.

2. The prosecution case against the applicants is, applicant – Suraj Gupta has initially entered into partnership with co-accused and

have accepted substantial amount from prospective flat purchasers towards part consideration for handing over developed property by 2012. Since the developed property as promised was not delivered inspite of receiving consideration, the offence came to be registered for criminal breach of trust and cheating.

3. Learned counsel appearing for the Applicants would strenuously urge that the applicants are holding a piece of land but were unable to develop the same in view of embargo under Development Control Regulations, as the area in which the development was to be carried out was reserved for development of Navi Mumbai Airport project. According to him, even today also, the applicants have strong desire and intention to deliver the developed property once project is cleared by Planning Authority.

4. The submissions of Mr. Surve, learned counsel appearing for the applicants are, considering the fact that the applicants are on interim bail since last more than two years. Applicant, Motilal is a senior

citizen. According to him, this Court has shown certain indulgence thereby extending ad-interim protection so as to enable them to show bonafides by depositing the amount. Mr. Surve, learned counsel appearing for the applicants submits on instructions that on the last date of hearing the applicants assured to deposit an amount of Rs.50.00 Lacs, however, they need some more time to arrange for it. Till this time, no such amount has been deposited in this Court by the applicants though assured.

5. As such, it can be inferred that the applicants have no intention to deposit part of amount, that they have received from various prospective flat purchasers. The applicants have shattered dream of small people who have aspired to have own home in this big city.

6. The fact remains that the applicants from 2012 onwards till this date has accepted substantial amount from the prospective flat buyers but neither developed the property nor refunded the amount. As such, necessary ingredients of Sections 420 and 406 of the Indian Penal

Code are made out against the applicants. For recovery of the property involved in crime, mode and manner of commission of crime and recovery of the amounts received from the prospective buyers warrants custodial interrogation of the applicants.

7. In that view of the matter, no case for grant of bail is made out. The application as such fails, stands rejected.

(NITIN W. SAMBRE, J.)