

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

**BAIL APPLICATION NO. 1070 OF 2019
WITH
CRIMINAL APPLICATION NO. 1050 OF 2019
IN
BAIL APPLICATION NO. 1070 OF 2019**

Sadiq S. Ratansi Applicant
v/s.
The State of Maharashtra Respondent

Mr. Gul A. Madnani for the Applicant.
Mr. S.V. Gavand, APP for the State.
Mr. Amar Mishra i/b. SRM Law Associates for Respondent No.2.
Mr. Jitendra Misal, PI, EOW, Mumbai.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 26th OCTOBER, 2021.

P. C. :-

. This is an Application under Section 439 of Cr.PC. filed by the aforesaid Applicant for grant of bail.

2. Heard learned counsel for the Applicant, learned APP for the State and learned counsel for the intervenor. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The Applicant who is facing trial in Sessions Case

No.760/PW/2018 pending before the file of Chief Metropolitan Magistrate's 47th Court, Esplanade, Mumbai for offences punishable under sections 406, 409 & 420 of the Indian Penal Code and under sections 3, 4, 13 & 14 of the Maharashtra Ownership of Flats Act, 1963. The crime against the present Applicant was registered pursuant to the First Information Report dated 05/09/2018 lodged by Prasad Nanoskar. The complainant had alleged that the Applicant who is the developer had entered into a development agreement with the Borivali Sai Suman Co-operative Society. In terms of the said agreement, the Applicant was to construct two buildings i.e., A and B buildings with 16 floors each. The members of the Society, who are retired BMC pensioners, were required to vacate the premises and the Applicant was required to pay to them accommodation allowance of Rs.9,500/- per month. The material on record indicates that the Applicant had also received sum of Rs.27 crores from 60 purchasers who had entered into agreements with the Applicant for purchase of premises from free sale component. The members of the society vacated the premises in the year 2010. The Applicant claims that he had paid rent till October, 2014 to all except 6 members. The Applicant claims that he was unable to complete the project because of stringent condition in DC rules which was amended in the year 2014.

4. The Applicant and the Society entered into a supplementary agreement dated 25/09/2014 whereunder the Applicant undertook to give possession of the premises on 31/07/2015 and further agreed to pay initial sum of Rs.15,000/- per month towards accommodation allowance from 01/02/2013 to 31/12/2013 and thereafter sum of Rs.16,500/- from 01/01/2014 to 31/12/2014 and sum of Rs.18,500/Rs.19,000/- from 01/01/2015 to 30/06/2015.

5. The Applicant did not hand over the project to the Society. Though he claims that he was unable to redevelop the same, he did not give NOC for appointment of any other developer. On the contrary, compelled the Society to take legal recourse to obtain possession of the property. The Applicant has not refunded the money received from the purchasers who had entered into agreements with the Applicant towards purchase of the premises from free sale component and has also not paid agreed accommodation allowances to the members from October, 2014.

6. On the previous date of hearing i.e., on 07/10/2021, the learned counsel for the Applicant had sought time to take instructions from the Applicant about deposit of money payable to the members of the

Society. Today, upon instructions, learned counsel for the Applicant states that the Applicant is unable to refund the money to the purchasers or pay the arrears of the rent to the members of the Society who had vacated the premises in the year 2010 who are retired BMC pensioners and presently without a proper shelter and are dependent upon others for their source of livelihood.

7. The material on record prima facie reveals that the Applicant has induced the purchasers and the members of the Society to part with the money and the premises on an assurance that he would develop the property. The Applicant, after having received the money, has abandoned the project and misappropriated the money paid to him by the purchasers. Prima facie, this is not merely a breach of contract but an act of cheating, with fraudulent intentions right from the inception. The conduct of the Applicant does not justify grant of bail.

8. Considering the above facts and circumstances, no case is made out for grant of bail. Hence, the Bail Application is dismissed. Criminal Application No.1050/2019 stands disposed of in view of dismissal of Bail Application.

(SMT. ANUJA PRABHUDESSAI, J.)