

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

ANTICIPATORY BAIL APPLICATION NO.1166 OF 2021

Rajesh Kumar Jamiyatram Pengawala & Anr. Applicants
versus
State of Maharashtra Respondent

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- Dr.Abhinav Chandrachud i/b. Mr.Premkumar Pandey a/w Khushboo Pathak a/w Shreedhar Huddar, Advocate for Applicants.
- Smt.Veera Shinde, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 29th SEPTEMBER, 2021

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.18 of 2021 registered with Surgana Police Station, Dist. Nashik on 15/02/2021, under Sections 406, 420, 467, 468 and 471 r/w. 34 of the Indian Penal Code (for short 'IPC').
2. Heard Dr. Abhinav Chandrachud, learned counsel for the applicants and Smt.Veera Shinde, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by one Tarak Patel. He has stated that the present applicants are builders and they had offered flats in a project called Strawberry Hills at Hatgad, Tal. Surgana. The informant met the applicants through agent. The applicants told the informant about the project. They had offered to sell flats at the rate of Rs.16,74,033/-. The informant booked flat Nos.101 and 116. He paid commission to the agent. He paid in all Rs.10,38,000/- by way of cheque and cash to the applicants. It is the case of the first informant that thereafter the applicants did not give him possession of the flats and did not return his amount and, therefore, this offence is registered.

4. Learned counsel for the applicants submitted that the flats are available in 'D' and 'C' wing and the applicants are willing to handover possession of those flats to the informant, provided he makes balance payment. He submitted that the dispute is raised by the informant because he does not want to make the balance payment. He submitted that, at the best, this

could be a civil dispute and there is no question of any criminal offence having been committed by the present applicants. He submitted that the investigating agency has submitted a report in the Sessions court while opposing applicants' anticipatory bail application. In that report, it is mentioned that the informant had booked flat Nos.101 and 116 in 'E' wing. Dr. Chandrachud submitted that, F.I.R. itself does not mention 'E Wing'. The receipts which are issued and annexed to this application at page No.46A mention the flat No. D-205. Therefore, according to him, it was always understood that flats were to be given in 'D' wing. Dr. Chandrachud also invited my attention to page No.46 of this application where again flat number is mentioned as D-205. It is signed by the first informant. He, therefore, emphasized that flats were always to be allotted in 'D' wing and, therefore, allegations about flats having been booked in 'E' wing for which permission is not given is not correct.

5. Learned APP produced investigation papers before me. She showed one Panchanama whereby the Applicant No.2 had

produced receipt book. The Panchanama shows that on the receipt whitener was used and then 'E' block was written. She submitted that there is some manipulation in the receipt book. Only two buildings out of 10 buildings are actually completed and therefore offence is made out.

6. As discussed earlier, the Applicants have shown their willingness to give two blocks to the complainant. Learned APP on instructions states that the first informant is not cooperating in the investigation inspite of serving summons on two occasions. He has also not produced original receipts before the investigating agency.

7. As far as production of receipt book is concerned, if whitener is used and number is changed this circumstance is quite peculiar because putting 'E' block on the receipt book is not going to help the Applicant. If it originally mentioned block 'D' building, then the case obviously helps the Applicants' contention. In any case as mentioned earlier, the Applicants have

showed their bonafide by offering two blocks in the completed buildings. The complainant is not cooperating with the investigation as stated by learned APP. Therefore it will not be proper to allow custodial interrogation of the Applicants. They can be protected by an order of anticipatory bail.

8. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.18 of 2021 registered with Surgana Police Station, Dist. Nashik, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each, with one or two sureties each, in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)