

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1733 OF 2021

Mohd.Akhtar Ishaq Shaikh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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Mr.Niranjan Mundargi i/b Ashish A. Dubey for the applicant.
Mrs. Rutuja Ambekar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 7th SEPTEMBER 2021

P.C:-

1 The applicant is seeking his release on bail being charge-sheeted in C.R.No. 81 of 2019 for the offence punishable under Section 406, 420 of the IPC read with Section 4, 4A and Section 13 of the MOFA. He is arrested on 6th November 2020. When the FIR is carefully perused, it allege that the present applicant agreed to sell a flat to the complainant and received necessary amounts, but has failed to effect the registration of the said flat and did not put the complainant in possession. These allegations gave rise to invocation of offence under Section 406 and 420 of the IPC along with relevant provisions of MOFA Act. The transaction which is alleged to have effected pertain to the

years 2007 – 2008, whereas the FIR came to be filed in the year 2019.

The counsel for the applicant has placed on record a copy of the order/judgment passed by the City Civil Court at Mumbai, Borivali Division, in Suit No.3190 of 2013 instituted by the complainant. M/s.Aawez Enterprises through Akhtar Shaikh as its proprietor i.e. the present applicant is impleaded as the defendant. The suit sought specific performance of a contract and the plaintiff claim that the defendants are jointly developing a plot of land situated in Village Mogra, Taluka Andheri by virtue of the agreement of sale dated 3rd May 2008, the defendant no.1 agreed to sell the suit flat for consideration of Rs.40 lakhs. It was pleaded that the amount was paid by the plaintiff, but the defendants are avoiding to register the agreement for sale and handing over of the suit flat. The compensation was also sought in the said suit. By an order dated 8th December 2015, the suit is dismissed with the following observation :-

7 *In a case at hand, the plaintiff has simply got an agreement for sale from defendant No.1 and keep mum up to five years without making correspondence with concerned housing society as well as the occupier of suit flat. As per section 8 of MOFA, the promoter is bound to refund the amount with interest whenever he failed to handover possession of premises in accordance with terms of his agreement. In a case at hand, the plaintiff has not sought alternate relief i.e. refund of amount. Moreover, he did not bring a cogent evidence to establish that he has paid Rs.40,00,000/- or Rs. 41,00,000/- to the defendant No.1 in*

consonance with an agreement for sale. In the result, I cannot consider suo-mottu the Section 8 of MOFA in favour of plaintiff. No doubt, plaintiff may file a suit under Section 8 of MOFA but within limitation. Considering all these aspects, I conclude that plaintiff is not entitled to get a decree of Specific Performance.

2 It can be seen that there is no evidence to establish that the amount was paid to the present applicant who was impleaded as defendant no.1.

3 Learned APP has clearly admitted that the amount that was paid by the complainant was not received by the present applicant but it went to the builder Kalim Salim Shariff, and the learned APP by referring to the amount being credited in the account of Kalim, fairly submit that the complicity of the applicant is not made out in the charge-sheet.

4 In the wake of the aforesaid circumstances, the applicant cannot be kept incarcerated on a vague allegation that an amount of Rs.40 lakhs by way of cheque was transferred in favour of Aawez Enterprises. Hence, the application is allowed subject to the following stipulation :

ORDER

- (a) The Applicant – Mohd. Akhtar Ishaq Shaikh in connection with C.R.No.81 of 2019 registered with D.N.Nagar Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (c) The Applicant shall mark his attendance in the Sessions Court on first Monday of every month.

The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J