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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 896 OF 2019

Amrita Rakesh Panchal

....Applicant

V/s.

The State of Maharashtra

.....Respondent

WITH

CRIMINAL APPLICATION NO. 886 OF 2019

IN

ANTICIPATORY BAIL APPLICATION NO. 896 OF 2019

Sandip Shivaji Sonawane

....Applicant

IN THE MATTER BETWEEN

Amrita Rakesh Panchal

....Applicant

V/s.

The State of Maharashtra

.....Respondent

WITH

INTERIM APPLICATION NO. 1094 OF 2019

IN

ANTICIPATORY BAIL APPLICATION NO. 896 OF 2019

Bharat Deeparam Trivedi

....Applicant

IN THE MATTER BETWEEN

Amrita Rakesh Panchal

....Applicant

V/s.

The State of Maharashtra

.....Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1185 OF 2019**

Rahul S/o Arvin Vyas Alias

....Applicant

Rahul S/o Dashrathlal Dave

V/s.

The State of Maharashtra

....Respondent

Mr. Ashok M. Saraogi for applicant in both applications

Mr. Gautam Kanchanpurkar in APPP

Ms. Sharmila S. Kaushik APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE: JULY 22, 2021.

P.C.:

1] In Crime No.1080 of 2018 punishable under Sections 420, 465, 467, 468, 471, 474, 475, 34 of I.P.C. read with Sections 3 and 4 of the M.P.I.D. Act, 1999 and Sections 3, 4 and 8 of MOFA, 1966, Applicant-female in ABA No.896 of 2019 is seeking pre-arrest bail.

2] Mr. Saraogi, learned Counsel for the Applicants would strenuously urge that the Applicant-Amrita stepped in the Partnership Firm M/s S.R. Builders and Developers against whose partners offence is registered, vide Partnership Deed dated 27/5/2015, According to him, liability in relation to project in question as on 26/5/2015 was not to be fastened against the Applicant, as same was the responsibility of erstwhile partners. He would then urge that having stepped in the aforesaid Partnership Firm, the Applicant herself has realised that she was duped by the main partners in very above crime. According to him, there exists a dispute amongst

partners, the monetary claim in the FIR is not within limitation and the Applicant, to show her bonafides, has deposited certain amount in this Court. Further submissions are, civil dispute is sought to be converted into criminal one. In the aforesaid backdrop, Mr. Saraogi submitted that the custodial interrogation of the Applicant is not warranted as the Applicant is very much available for investigation. Applicant-Rahul has also claimed relief on the same count.

3] Per contra, the learned APP assisted by the Counsel for the complainant would urge that by the aforesaid date, the Firm of which the Applicants are partners has received an amount from the prospective buyers of the rooms/flats to the tune of Rs 91,44,937/-. She has placed on record report of the Investigating Officer and pointed out from the details mentioned therein the manner in which the Applicants have participated in the commission of offence, thereby practicing fraud on the prospective flats/rooms buyers. She

would further claim that custodial interrogation of the Applicants is very much warranted as investigation is hampered for want of custodial interrogation.

4] Considered rival submissions.

5] Main Accused Rajesh Rathod formed S.R. Builders which was converted into S.R. Builders & Developers, a Partnership Firm alongwith Applicants-co-accused on 27/5/2015.

6] Though Mr. Saraogi has invited attention of this Court to the Partnership Deed Dated 27/5/2015 so as to claim that liability of the Proprietary Firm S.R. Builders upto 26/5/2015 cannot be fastened on the Applicants, as all the three partners (Accused) have created Partnership Firm M/s S.R. Builders and Developers on 27/5/2015.

Fact remains that even subsequent to the said date i.e. 27/5/2015, Applicants in the capacity of partners have accepted substantial amount towards consideration as reflected in the FIR and investigation papers. It is not that only one installment was accepted by the Applicants subsequent to the aforesaid cut off date of 27/5/2015 but on number of occasions i.e. 30/9/2015, 29/4/2016, 30/11/2017, they have accepted substantial amount from the complainant and other similarly placed persons. It appears that the Applicants while acting hand-in-glove with other partners accepted the amount of Rs 91,44,937/- from seven prospective buyers till the date of registration of offence by giving false promises of providing flats/rooms in developed property. Applicants though have assured to give possession by 31/1/2017, till this date neither possession is given, sale deed is executed nor the amount with interest is refunded.

7] The contention of Mr. Saraogi that time barred claim is sought to be brought within limitation by virtue of registration of offence in question would hardly impress this Court as the Applicants of late have accepted the amount on 30/11/2017. Applicants still continued with false promises of providing flats/rooms which are not honoured till today. The offence is registered on 26/11/2018. Even if Applicants have deposited some amount in this Court or Applicants have made statement that entire amount will be deposited in this Court with reasonable interest, this court has not noticed any such bonafides as the present Applications are pending for consideration for last more than two years. Even if Applicants have deposited some amount in this Court, (Rs 20,50,000/-) that by itself will not absolve the Applicants of their criminal liability. Merely passing liability to other partners i.e. Rajesh Rathod -Proprietor of S.R. Builders does not mean that the Applicants cannot be inferred to have participated in

the offence in question. Applicant - Amrita subsequent to 2015 herself has accepted the amount as is inferred from the investigation carried out till this date.

8] Each of the Applicants before this Court is shown to have 33% shareholding in the Partnership Firm. Though it is claimed that they are retired from Partnership Firm, still a false assurance was tried to be given, in response to Court's query that Applicants are willing to handover possession of the flat to the complainant only. The said statement speaks volumes about criminal intentions and conduct of the Applicants, as Applicants are trying to blow hot and cold, as on one hand they are claiming to be retired partners and on the other they are assuring possession to complainant only. The offence in question appears to be a financial crime having large scale implications on the economy of the victims as their dream of self-owned house is shattered because of criminal act of the Applicants.

Applicants who appear to be white colour criminal, have taken disadvantage of the situation as is prevailing in the place like Bombay where there is large crunch of space.

9] In the aforesaid backdrop, there is strong prima facie case against the Applicants. The necessary ingredients of relevant sections for the offence as alleged can be verymuch inferred. In view of above, no case for grant of pre-arrest bail is made out. Both the Anticipatory Bail Applications as such fail and same stand rejected. Consequently, Applications taken out therein are also disposed of.

10] Since ad-interim protection is in operation for a period of last two years, the same is continued as is prayed by Mr. Saraogi, learned Counsel for the Applicants for a period of two weeks from today.

[NITIN W. SAMBRE, J.]