

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1543 OF 2021**

Mohammad Imtiyaz Khan ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Sandeep Ramakant Karnik a/w Mr. Niranjan Mundargi, Advocate for the Applicant.

Ms. P.P. Shinde, APP for the Respondent - State.

Ms. Kalpana Trivedi, Advocate for Orig. Complainant.

Mr. Milind Nagpure, API, Amboli Police Station, Mumbai.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 29th JULY 2021.

P.C. : (Through Video Conferencing)

1. The applicant herein is an accused in C.R. No.476/2019 registered with Amboli Police Station for the offences punishable under section 409, 420, 406, 120-B of the Indian Penal Code along with Sections 3, 4, 13 and 14 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short "MOFA Act").

2. The applicant had filed an application seeking enlargement on bail in Crime No.476 of 2019 before the Additional Sessions Judge, Borivali at Dindoshi. The learned Additional Sessions Judge Court

Room No.13, Dindoshi (Borivali Division) granted bail to the applicant under section 439 of Cr.PC. In the course of arguments, it was brought to the notice of the Additional Sessions Judge that the applicant herein had issued four cheques to the first informant in lieu of the amount of Rs.56,08,800/-. However, the said cheques were dishonoured on presentation for encashment. The learned Sessions Judge, after considering the facts of the case and after hearing both the parties had formed an opinion that the investigation was not completed and therefore, unless and until the accused deposited an amount of Rs.56,08,800/-, no case for bail was made out. It was also observed as follows:-

“The applicant is unable to complete the construction and fulfill the terms and conditions of said allotment letter due to cancellation of construction agreement by the said society, therefore, it is just and proper to grant bail to the applicant conditionally.

Bail application No.309 of 2020 is allowed.

Accused, Mohammad Imtiyaz Khan be released on bail on depositing cash amount of Rs.56,08,800/- (Rupees Fifty Six Lakhs Eight Thousand Eight Hundred Only).”

3. The order dated 11th March 2020 passed by the Additional Sessions Judge, Borivali Division, Dindoshi is challenged before this Court by filing the present bail application. It is the specific contention

of the learned counsel for the applicant that the applicant had not volunteered to make any payment. According to the learned counsel for the applicant, the delay or inability to hand over the flat to the informant was because of the cancellation of the development agreement by the State with the firm of the applicant. It is submitted that the construction of the second wing of the said project could not be completed because of various procedural formalities. The delay was not caused deliberately and the applicant had no role to play in the delaying of the project. In fact, appropriate permissions were not obtained and therefore, the society had cancelled the development agreement. The learned counsel for the applicant has filed an affidavit of the applicant before this Court on 3rd March 2021. In the course of hearing of the petition, the Investigating Officer has recorded the additional statement of Mrs. Minal Sandeep Shenoy, the daughter of the complainant on 6th July 2021.

4. The learned counsel has filed an affidavit dated 3rd March 2021 contending therein that he is ready to deposit the amount in the Court under protest. The learned counsel has placed on record a schedule for making the payment. The said proposal is denied by Mrs. Minal Shenoy, the complainant.

5. It is true that while adjudicating upon the application filed under section 439 of Cr.P.C., the Courts cannot act as recovery agents. In the case of *Dilip Singh vs. The State of Madhya Pradesh and Anr.*, in Criminal Appeal No.53 of 2021 arising out of SLP (Cri.) No.10484 of 2019, the Supreme Court has observed as follows :-

“5. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realization of disputed dues. It is open to a Court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character behaviour and standing of the accused; and the circumstances which are peculiar to the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.”

6. In view of the above order, the order dated 11th March 2020 passed by the Additional Sessions Judge, Dindoshi (Borivali Division) needs to be quashed and set aside.

7. The father of the complainant has paid the entire amount to the applicant, it is therefore, necessary to protect the interest of the

depositor. The learned counsel for the petitioner has filed the affidavit-cum-undertaking before this Court on 3rd March 2021 contending therein that the applicant shall deposit the amount as per the schedule given by the applicant in the affidavit-cum-undertaking dated 3rd March 2021. The applicant shall abide by the undertaking given to the Court. The said amount is without prejudice to the rights of the applicant. The undertaking is given by the applicant voluntarily and hence, the same is accepted.

8. The applicant has shown his bonafides to assure the complainant that he has no intention to cheat. He had issued cheques also. Hence, the applicant undertakes to deposit the amount in this Court without prejudice to his rights, deserves to be accepted. The schedule given by the applicant is as follows :-

- “a. 20% of the said amount quantifying to Rs.11,21,760 to be deposited before my release from jail.
- b. Further 20% of the balance amount of Rs.44,87,040 quantifying to Rs.8,97,408 to be deposited within a period of 3 months from date of release.
- c. Further 20% of the balance amount of Rs.35,89,632 quantifying to Rs.7,17,927 to be deposited within a period of 5 months from date of release.
- d. Further 20% of the Balance amount of Rs.28,71,705

quantifying to Rs.5,74,341 to be deposited within a period of 7 months from date of release.

- e. Balance amount quantifying to Rs.22,97,364 to be deposited within a period of 12 months from the date of release.”

9. Since, the application seeking enlargement on bail is pending for a longtime, the applicant shall deposit an amount of Rs.11,21,760/- within two weeks after he is released from the jail. The applicant at this stage has prayed for provisional cash bail. The request is accepted. Hence, the following order :-

ORDER

- (i) The order dated 11th March 2020 passed by the Additional Sessions Judge, Dindoshi (Borivali Division) is hereby quashed and set aside;
- (ii) The applicant be enlarged on bail in Crime No. 476/2019 on furnishing P.R. bond in the sum of Rs.50,000/- and one or more solvent sureties in the like amount;
- (iii) The applicant be released on provisional cash bail of Rs.50,000/- for a period of six weeks from the date of release within which he shall furnish one or more solvent sureties in the like amount;

- (iv) The applicant shall deposit his passport, if any, before the Court of Magistrate, Andheri Court;
- (v) The applicant shall report to Amboli Police Station on the last Sunday of each month for six months.
- (vi) The applicant shall abide by the schedule submitted before this Court;
- (vii) Bail application is allowed and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)