

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4 OF 2021**

Mark Imleio Castoleno .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Aniket U. Nikam with Mr. Vivek N. Arote for the Applicant.

Ms. Rutuja Ambekar, A.P.P. for the State.

Ms. Jasmine Mark Castoleno, the wife of the Applicant is present in the Court.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 05TH AUGUST, 2021.

P.C:-

1. The Applicant is charge-sheeted in connection with C.R. No.324 of 2019 registered with Deccan Police Station, Dist. Pune, thereby invoking Sections 406, 409, 420 read with Section 34 of the IPC and Sections 3 and 4 of the MPID Act.

2. The Applicant is arraigned as Accused No.2. The charge-

sheet alleges that one Dheeraj Tamchikar and the present Applicant had bloated a scheme styled as “Lake Avenue” at Andhale Village Hinjewadi, Taluka Mulshi, Dist. Pune, where it is open for the people to purchase plots by depositing certain amounts, which would double after three years of investment or the plot will be transferred in the name of the investors. In the scheme, the Complainant and other witnesses invested their money, which is alleged to be to the tune of Rs.56 lakhs. However, as per the assurance, neither the amounts were doubled nor the plot was transferred in the name of the investors. This resulted in registration of the aforesaid offences against two accused persons by invoking the provisions of the MPID Act and under the relevant provisions of the IPC.

3. In connection with the said C.R., the Applicant came to be arrested on 25/11/2019. The investigation is complete and the charge-sheet is filed. The Applicant has placed on record the Articles of Association of Veracity Landmark Promoters Private Limited and the said document discloses that the Applicant is a Director of the said Company and he holds 10% stake in the said Company.

4. On 25/11/2020, Mr. Nikam made a specific statement that those investors, who are interested in the amounts, have been paid the amounts and, as far as the amounts invested by the Complainant and her aunt Jyoti Sarmokadam, which is to the

tune of Rs.14 lakhs are concerned, while the co-accused Dheeraj Tamchikar was admitted to interim protection, his affidavit-cum-undertaking came to be recorded, wherein he had stated that he will pay the balance amount to the Complainant and his aunt. Thus, an amount of Rs.14 lakhs (approximately) out of the total alleged investments of Rs.56 lakhs has already been paid.

5. When, on the last date, learned A.P.P. was directed to find out whether the investors other than the Complainant are ready and willing to accept the plots and whether the plots are ready and available, on 09/12/2020, learned A.P.P. made a statement that the plots are available, but it will have to be ascertained from the investors whether they are ready to accept the plots.

6. No proposal came forward from any of the investors till date. Taking the case in the charge-sheet, the Applicant is a 10% shareholder in Veracity Landmark Promoters Private Limited and since he is incarcerated from 2019 and the investigation being complete and the charge-sheet being filed, instead of keeping him stranded behind the bar, I asked learned counsel for the Applicant whether some money can be deposited by him to ensure the interest of the depositors.

7. Mr. Nikam, learned counsel for the Applicant, after taking into account the liability of the Applicant at 10%, submits that the Applicant is ready and willing to deposit Rs.10 lakhs in the

MPID Special Court, Pune, which would be in excess of his liability, without prejudice to his defence in the trial.

8. Accordingly, since the Applicant is behind bar, the wife of the Applicant has placed an affidavit on record, where she undertakes as under:

- “A) I undertake on behalf of my husband that my husband will pay the first installment of Rs.2,00,000/- (Rupees Two Lakhs) within a period of one week and on deposit of which my Husband may kindly be released on Bail.
- B) I further undertake on behalf of my husband that my husband will pay the Second installment of Rs.4,00,000/- (Rupees Four Lakhs) within a period of one month from the release of my husband from the prison.
- C) I further undertake on behalf of my husband that my husband will pay the third installment of Rs.4,00,000/- (Rupees Four Lakhs) within a period of one month from the date of payment of the second installment of Rs.4 lakhs.”

The said affidavit filed by Ms. Jasmine Mark Castoline, wife of the Applicant, is taken on record.

9. Since the incarceration of the Applicant will not serve any purpose and since he cannot be incarcerated indefinitely,

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awaiting the trial of the offence registered in 2019 and down the line, for three years, no charge is framed, in my considered opinion, the Applicant deserves his liberty, subject to the condition that he will abide by the terms and conditions solemnly affirmed by his wife on his behalf in her affidavit dated 05/08/2021. Hence, the following order:

: ORDER :

- (a) The Applicant – Mark Imleio Castoleno shall be released on bail in C.R. No.324 of 2019 registered with Deccan Police Station, District Pune, on executing P.R. bond to the extent of Rs.50,000/- and furnishing 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 and shall not tamper with prosecution evidence.
- (c) The Applicant shall deposit an amount of Rs.2 lakhs (Rupees Two Lakhs only) in the MPID Special Court, Pune, within a period of one week from today and, on such deposit, he shall be released on bail.

(d) The Applicant shall abide by the schedule of other two installments as undertaken in clauses (B) and (C) of the said Affidavit dated 05/08/2021, which have been reproduced hereinabove.

10. The Application is allowed in the aforestated terms.

11. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]