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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 255 OF 2021**

DEEPAK CHIMANLAL SHAH AND ANRAPPLICANTS

V/s.

THE STATE OF MAHARASHTRARESPONDENT

**WITH
INTERIM APPLICATION NO. 618 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 255 OF 2021**

KIRIT HIMATLAL MORVADIYAAPPLICANT

IN THE MATTER BETWEEN
DEEPAK CHIMANLAL SHAH AND ANRAPPLICANTS

V/s.

THE STATE OF MAHARASHTRARESPONDENT

Mr. Aabad H. Ponda, Senior Advocate i/b Mr. Ashish Raghuvanshi for
the applicant

Mrs. Pranoti Pawar for intervener

Mrs. Rutuja Ambekar APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE: DECEMBER 9, 2021.

P.C.:

1] Applicant is seeking pre-arrest bail in C.R. No. 94/2020
registered with Malad Police Station for offence punishable under

Sections 406, 420 r/w Section 34 of the Indian Penal Code.

2] Case of the prosecution is, complainant with an intention to purchase house, has paid part consideration to the firm of which accused is a partner. It is claimed that complainant booked 4 bungalows, possession of which was assured to be handed over within 15 months i.e. by mid 2012.

3] As the project got delayed, complainant was asked to wait, however, after completion of major part of the project, neither the possession was handed over nor the amount of consideration was returned. As such, complaint came to be lodged resulting into registration of the offence.

4] Mr. Aabad Ponda, learned senior counsel appearing for the applicants would urge that receipt of the amount of consideration from the complainant is not a disputed fact by the firm of which he was a partner upto 2014. According to him, project got delayed and the entire liability qua execution of the project and handing over the

possession of the developed properties (bungalows) as was promised was taken over by other partner namely Mahesh Naik. He would further claim that since said partner who was in-charge from 2014 onwards failed to deliver, criminal liability cannot be fastened against the applicants.

5] Learned APP in the aforesaid background would urge that even if retirement of the applicants from the partnership firm in 2014 can be inferred, which fact is also not disputed by co-accused Mahesh Naik, however the applicants' involvement can be inferred as while accepting booking amount and consideration in past, applicants were party to decision making process and promise made.

6] I have considered aforesaid submissions.

7] Applicants have tendered an affidavit thereby assuring this Court that they have deliberated the issue with co-accused Mahesh . Applicant in other application has assured the possession of 4 bungalows within 6 to 10 months provided extra cost is paid to said

accused by the complainant.

8] As such, in the aforesaid background of affidavit, the fact that applicants have resigned from the firm way back in 2014 and the entire liability to deliver developed property was on the co-accused Mahesh Naik, co-accused Mahesh Naik in his bail application has not disputed his liability to complete the project and deliver the developed property as was promised. As such, applicant had an intention to deliver.

9] That being so, in my opinion, case for grant of protection is made out.

(i) In the event of arrests of applicants in C.R. No. 94/2020 registered with Malad Police Station for offence punishable under Sections 406, 420 r/w Section 34 of the Indian Penal Code, they shall be released on bail on furnishing P.R. bond in the sum of Rs. 25,000/- each with one or more sureties in the like amount.

(ii) Applicants shall neither influence prosecution witnesses in any manner nor tamper with evidence.

(iii) Applicants shall attend the Investigating Officer as and when directed.

10] Application alongwith intervention application stand disposed of.

[NITIN W. SAMBRE, J.]

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