

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1213 OF 2020

Kalidas Nana Chandane	Applicant
versus	
The State of Maharashtra	Respondent

**WITH
WRIT PETITION (STAMP) NO.2468 OF 2020**

Sonali Kalidas Chandane	Applicant
versus	
Vipul Nagindas Sanghvi & Anr.	Respondents

**AND
INTERIM APPLICATION NO.426 OF 2021
IN
WRIT PETITION (STAMP) NO.2468 OF 2020**

Vipul Nagindas Sanghvi	Applicant
versus	
Sonali Kalidas Chandane & Anr.	Respondents

Mr.Anil K. Lulla with Adv.S.N.Chandane in Bail Application and Writ Petition for applicant/petitioner.

Mr.A.R.Kapadnis, APP, for State.

PSI Wankhede and API Gajare, Charkop Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 11th March 2021

PC :

1. The applicant in bail application No.1213 of 2020 is seeking bail in connection with C.R. No. 163 of 2017 registered with Charkop Police Station. The First Information Report (for short "FIR") was registered on 16.04.2017 for the offence punishable under Sections 420, 406, 120(B) of Indian Penal

Code (for short “IPC”) and Sections 3 and 4 of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short “MOFA”). Subsequently, Sections 467, 468, 471, 403, 506 of IPC were also invoked. The petitioner in Writ Petition St. No.2468 of 2020 has challenged the order dated 27.02.2020 passed by the Additional Sessions Judge, Dindoshi, Mumbai cancelling bail granted to the petitioner by the Court of Additional Chief Metropolitan Magistrate 24th Court Borivali, Mumbai. Vide order dated 04.04.2018, the petitioner and the applicant were granted bail by the Court of Learned Magistrate in accordance with Section 167(2) of Cr.P.C. The applicant in bail application No.1213 of 2020 was subsequently arrested on 29.08.2020.

2. The case of the prosecution is that accused Sonali Kalidas Chandane is the Director of M/s. Prisha Developers and accused Kalidas Chandane is the Legal Consultant of the said Company. The accused represented to the complainant and other investors that they are developing the property bearing CTS No.1393, 1396, 1399C situated at Mauje Dahisar, Borivali, Mumbai having the name as project Prisha Heights. Accused Mihir Oza represented himself as marketing agent of the project and made representation that the accused are developing the project and the development would commence shortly. The complainant parted amount for purchase of flat and parking space. The other person also parted amount for

purchasing flat. The amount was collected from flat purchasers. The promises were not fulfilled. The dispute relating to the property was not informed to the purchasers of flats. Huge amount was accepted by the accused. FIR was registered against the Sonali Chandane, Kalidas Chandane, Mihir Oza, Kiran Gupte and Rajaram Bandekar.

3. The applicant and the petitioner were arrested on 01.02.2018. They were produced before the Court for remand on 02.02.2018. Both of them preferred an application for bail under Section 167(2) of Cr.P.C. vide order dated 04.04.2018 the Learned Additional Chief Metropolitan Magistrate granted bail to the applicant and the petitioner. While granting bail, it was observed that the accused were prosecuted for the offences punishable under Sections 420, 406, 467, 468, 471, 403, 506 and 120(B) of IPC and Sections 3 and 4 of the MOFA Act. It was contended by the accused that the charge-sheet was not filed within 60 days. Learned Magistrate calculated the statutory period for filing the charge-sheet as 60 days and in view of default in filing charge-sheet, granted bail to the applicant and the petitioner.

4. The complainant challenged the order dated 04.04.2018 and preferred an application for cancellation of bail before the Sessions Court. The Sessions Court allowed the application and bail granted to accused was cancelled. They were granted

one month's time to surrender before the Court for taking necessary steps for bail.

5. Apparently, the accused did not surrender within stipulated time. Subsequently, the applicant Kalidas Chandane was arrested and the petitioner Sonali Chandane had preferred the present petition before this Court. No interim relief was granted to the petitioner by this Court till the disposal of the said petition.

6. Applicant Kalidas Chandane preferred an application for bail before the Court of Learned Additional Chief Metropolitan Magistrate. The said application was rejected by order dated 11.09.2020. Thereafter, he had preferred an application for bail before the Sessions Court which has been rejected by order dated 19.10.2020.

7. Learned counsel for the applicant submitted that the applicant is in custody from 29.08.2020. Initially, he was granted bail under Section 167(2) of Cr.P.C. by order dated 04.04.2018. The said order was set aside by the Sessions Court on 27.02.2020. Investigation is completed and charge-sheet is filed. The applicant was a Legal Consultant. Further custody of the applicant is not necessary. The accused/company viz. Prisha Developers undertook project Prisha Heights in 2013. Land was purchased from

M/s.Veekaylal Investment Company Ltd. for Rs.3,01,00,000/-.

Despite having clear title to the land purchased by the company, some of the *kuls* claimed right in the property which resulted in multiple litigations. Some of the investors demanded return of their amount. The complaint was made to the police about the threats issued by the investors. There was no criminal intent nor violation of any conditions. All the documents were collected by the investigating agency. There was no fabrication of documents. M/s. Veekaylal Investment Company Pvt. Ltd. had issued receipt of payment as per agreement dated 15.10.2013 towards the sale of the property to M/s. Prisha Developers Pvt. Ltd. Power of Attorney was executed by M/s.Veekaylal Investment Company Pvt. Ltd. giving development rights of the property to Prisha Developers. The litigation had ended before the Apex Court. It is apparent from the order of the Supreme Court dated 24.07.2019 passed in Special Leave Petition No.13757 of 2019 that petitioners therein had challenged order dated 05.02.2019 passed by High Court of Bombay. The said petition was preferred by Aanandibai Anant Patil & Ors. against M/s. Veekaylal Investment Company Pvt. Ltd. & Ors. Special Leave Petition was dismissed. Provisional allotment of flat was made to the complainant vide letter of allotment dated 15.01.2014. The petitioner Sonali Chandane had made a complaint to the Deputy Commissioner of Police regarding threats of arrest and harassment and false implication in the criminal case on

12.04.2016. Applicant Kalidas Chandane forwarded letter to Senior Inspector of Police Kandivali Police Station submitting the documents to them.

8. Learned advocate for the petitioner submitted that the petitioner Smt. Sonali Chandane was granted bail by the Court of Additional Chief Metropolitan Magistrate in accordance with Section 167(2) of Cr.P.C. The order of bail was in operation from 04.04.2018. The application for cancellation of bail was preferred by the complainant and not by the State. The Sessions Court had committed an error in cancelling the bail granted to the petitioner. Charge-sheet was not filed within 60 days. Petitioner was entitled for bail as per Section 167(2) of Cr.P.C. Reliance is placed on judgment of the Apex Court in the case of **Bashir and Others Vs. State of Haryana AIR 1978 SCC 55.**

9. Learned APP submitted that huge amount was collected by the accused from the investors with false promises of development of the project. The applicant Kalidas Chandane is the husband of petitioner Sonali Chandane. Although, the applicant contended that he was the Legal Consultant of the accused/company, he has played a vital role. The wife of the applicant is the Director of the Company. All the accused had acted in connivance with each other. There was no clear title of the property. Despite that, false inducement was made to the

investors. More than five crores were involved in transactions. Although, bail was granted to the petitioner Sonali Chandane, it was cancelled vide order dated 27.02.2020. She has not surrendered before the Court. No interim protection was granted to her by this Court. Non bailable warrant has been issued against the petitioner Sonali Chandane. She is absconding. The petition itself is not maintainable since the Court has issued non-bailable warrant against her.

10. Learned counsel for the intervenor/complainant has opposed application for bail by filing reply/written submission and the documents. The complainant has also preferred intervention application to oppose the relief prayed by the petitioner. The contention of the complainant is that false promises were made. Huge amount was collected. Investors were put to loss. Complainant has suffered loss. The period for filing charge-sheet in the present case is 90 days and not 60 days.

11. The applicant Kalidas Chandane was working as Legal Consultant. No doubt, he is the husband of one of the Director of the Company. From the documents, it is apparent that the property was purchased by the accused/company for development and payment was made. Power of attorney was executed by the seller of the property. There were litigations initiated by some of the persons. The proceedings went to the

Apex Court. The informant preferred an application before the Learned Magistrate under Section 319 of Cr.P.C. for issuing summons process against M/s.Veekaylal Investment Company Ltd. The said company was not implicated as accused. Learned Additional Chief Metropolitan Magistrate vide order dated 12.02.2020, rejected the said application. Charge-sheet is already filed in the present case against the accused. The applicant is in custody after his re-arrest from 29.08.2020. Further detention of the applicant is not necessary.

12. As far as the petitioner in Writ Petition St. No.2468 of 2020 is concerned, it can be seen that she was arrested on 01.02.2019. She was produced before the same Court on remand on 02.02.2018. Application for bail was preferred before the Court of learned Magistrate in accordance with Section 167(2) of Cr.P.C. on the ground that the charge-sheet was not filed within 60 days. Although Section 467 of IPC was invoked, the learned Magistrate granted bail to the applicant as well as the petitioner in accordance with Section 167(2) of Cr.P.C. The punishment provided Section 467 of IPC was the life imprisonment or imprisonment up to 10 years. The statutory period of filing charge-sheet would be 90 days and not 60 days. Bail granted to the petitioner was rightly cancelled by the Sessions Court by order dated 27.02.2020. The petitioner was directed to surrender within one month. She did not surrender before the Court. The Writ Petition

challenging the said order was filed before this Court. However, no interim relief has been granted to the petitioner of any nature of stay to the operation of impugned order. Non bailable warrant is issued against the petitioner. There is no infirmity in the order dated 27.02.2020 passed by Additional Sessions Court cancelling the bail. Hence, writ petition must fail and deserves to be dismissed. Hence, I passed the following order: -

ORDER

- (i) The Bail Application No.1213 of 2020 is allowed and disposed of;
- (ii) The applicant Kalidas N. Chandane is directed to be released on bail in connection with CR No.163 of 2017 registered with Charkop Police Station, on his executing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Charkop Police Station once in a month on every first Saturday between 11 am and 1 pm for first six months, and thereafter once in three months on every first Saturday between 11 am and 1 pm till further orders.
- (iv) The applicant shall not leave India without the permission of Trial Court;
- (v) The applicant shall deposit his passport before Trial Court;

- (vi) In the event applicant does not have passport, he shall file an affidavit in that regard before Trial Court;
- (vii) Writ Petition (Stamp) No.2468 of 2020 is dismissed;
- (viii) The petitioner shall surrender before the Investigating Officer within a period of three weeks from today;
- (ix) Interim Application No.426 of 2021 stands disposed of.

2. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)