BDP-SPS-TAC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1927 OF 2021

Mr. Aarif Abdul Razak Chunawala and Ors. ..Applicants

Versus

The State of Maharashtra and Anr. ..Respondents

Mr. Rajiv Chavan, Senior Advocate a/w Ms. Priyanka Chavan and Mr. Sanjay Dubey i/by Akhlak A. Khan, for the Applicants.

Ms. A. A. Takalkar, APP for the Respondent – State.

Mr. Niranjan Mundargi a/w Mr. Sahil Namavati i/by Lexicon law Partners, for Respondent No.2 – Intervenor.

Mr. Shivaji D. Shinde, PSI, Santacruz Police Station – present.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 08, 2021

P.C.:-

1] Applicants are Directors of M/s Fairmont Construction Pvt Ltd. ("Fairmont"). Kanakdhara Ventures Private Limited ("Kanakdhara") was to redevelop SRA project for New Ambivali Co-operative Housing Society Limited ("the Society"). Accordingly, Fairmont of the Applicants entered into MOU with Kanakdhara and Balaji Infra

Projects on 31/03/2015. A supplementary contract was again entered into on 18/09/2015 for redevelopment of the project. It appears that in January 2017, as per deal, it was decided between Saroj Landmark Realty LLP ("Saroj Realty") and Fairmont to execute the project. Since the complainant rendered his services as a broker in the said deal, commission of Rs 9 crores was agreed to be paid by Fairmont, whereas Rs. 2,51,00,000/- by Saroj Realty.

2] In the aforesaid background, fresh agreement of development was entered into on 30/07/2018 between the Society, Kanakdhara, Fairmont and Saroj Realty.

3] Since it was agreed to pay commission, as referred to above, to the complainant, Saroj Realty honoured its commitment, thereby paying the amount of Rs 2,51,00,000/- to the complainant. However, Fairmont claimed that, of the amount of Rs 9 crores, 4,51,00,000/- will be paid in the form of developed property and accordingly Fairmont issued an allotment letter of three properties viz. 262 sq. feet of Shop Block, 453 sq. feet of Shop Block and 180 sq. feet of Shop Block. The balance amount of Rs 4,50,000,00/- was to be paid after completion of the project.

4] As such, the Fairmont created third party interest in favour of the complainant.

5] The Fairmont cheated the complainant by entering into an agreement dated 14/09/2019 in favour of Saroj Realty and Kanakdhara, thereby withdrawing itself from the aforesaid project after having accepted consideration of Rs 35,61,55,000/-. As such Crime No. 285 of 2021 punishable under Sections 406, 420 read with Section 34 of the IPC came to be registered with Santacruz Police Station.

6] Submissions of Mr. Chavan, learned Senior Counsel appearing for the Applicants are, the agreement of payment of brokerage i.e. Rs 9 crores is a contingent contract, as the same was valid upto 30/08/2017, provided 4 (four) FSI under DCR was granted. He would claim that neither 4 (four) FSI was granted till 30/08/2017 nor the Project was taken to its logical end. As such, he would claim that allegations of cheating and criminal breach of trust are without any basis. He would further claim that dispute between the parties is arising out of the contract and as the same is of civil nature, remedy to the complainant is of taking recourse to civil proceedings and not by way of registration of complaint. According to him, the FIR in categorical terms speaks that Project will now be completed by Saroj Landmark Realty LLP. That being so, complainant has a remedy against the parties who are presently developing the Project. He would claim that necessary ingredients of Sections 406 and 420 of the IPC are not satisfied and that being so present Application needs to be allowed.

7] While countering the aforesaid submissions, learned APP Ms. Takalkar assisted by learned Counsel Mr. Mundargi for the complainant, would urge that the fraud practiced by the Applicants can be inferred from its face value, having regard to the conduct of the Applicants/Accused. It is claimed that the complainant was made to understand that it was decided to develop the project by the Applicants and the complainant was promised appropriate commission in the project by the Firm of the Applicants. It is claimed that Applicants have falsely represented Saroj Realty and Kanakdhara that no third party interests are created in the property and after agreement dated 14/09/2019 left the Project by receiving an amount of Rs 35,61,55,000/-. As such, it is claimed that necessary ingredients of Sections 406 and 420 of the IPC are satisfied.

8] Considered submissions.

9] The agreement produced on record, thereby promising brokerage for transaction to the tune of Rs 9 crores can be inferred from the documents. Fairmont, of which Applicants are Directors, is a party to the said Term-sheet executed on 31/03/2017. Though Term-sheet speaks of the period of bindingness of the same upto 30/08/2017, however same was contingent contract and rider mentioned therein is, Firm of the Applicants shall be required to refund the amount mentioned in clause-13(f). Clause-13(f) speaks of receipt of Rs 51,00,000/- from Saroj Realty, the firm of the Applicants. As far as clause-24 is concerned, same has no concern whatsoever with clause- 33 which provides for a binding terms. As such, it is apparent that Applicants have promised and were bound to pay brokerage of Rs 9 crores. In lieu of the aforesaid brokerage, it appears that the allotment letter dated 31/01/2019 with an intention to discharge the liability in part, came to be executed by the Firm of the Applicants in favour of the informant, thereby allotting the aforesaid properties, possession of which was to be handed over within thirty days from the date of receipt of Occupation Certificate. It is further informed that balance amount of Rs 4,50,000,00/- was to be paid immediately after commencement of the Project. It appears that, abruptly, Applicants' Firm left the Project by receiving consideration of Rs 35,61,55,000/- by falsely representing Saroj Realty and Kanakdhara that no third party interest would be created in the property, particularly when allotment letter speaks of creating third party interest. As on date, said project is sanctioned with 4 (four) FSI is a fact not in dispute.

10] From the very conduct noted above, Applicants on one hand promised payment of brokerage to the informant, as with the aid and help of the informant have created rights in the Project, earned profit of Rs 35.61 crores and not honoured the commitment of payment of either brokerage or developed property. The fact that Applicants have created third party rights in favour of the informant was also suppressed from other two partners who have taken over the Project, after Applicants left the said Project having received substantial amount. As such, intention of the Applicants to dupe or cheat the complainant and thereby causing criminal breach of trust can be noticed.

11] In the aforesaid background, very ingredients of Sections 406 and 420 of the IPC are very much satisfied. That being so, prima facie involvement of the Applicants being Directors of Fairmont can be inferred which warrants custodial interrogation of the Appliacnts.

12] As such, no case for bail is made out. Application for anticipatory bail stands rejected.

13] The request made by Mr. Chavan, learned Senior Counsel appearing of the Applicants for continuation of ad-interim protection for four weeks from today is granted as and by way of last chance. Ad-interim protection is continued for four weeks.

(NITIN W. SAMBRE, J.)