IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 976 OF 2019
WITH
INTERIM APPLICATION NO. 1504 OF 2020
WITH
INTERIM APPLICATION NO. 553 OF 2019

1. Sumeet Jawaharlal Jain
   Age :- 39 Years, Occ : Business

2. Ramesh Jugraj Mehta
   Age :- 53 Years, Occ : Business
   Both at Office Address : Poonam Park,
   Vevoor, Taluka & Dist. Palghar. … **Applicants**

Versus

1. The State of Maharashtra
   Through Palghar Police Station.

2. Amit B. Parekh
   Age :-Adult, Occ – Unknown,
   R At B-5, Shivbhavani Tower,
   C.S. Complex Road, Anand Nagar,
   Dahisar (E), Mumbai … **Respondents**

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO. 977 OF 2019
WITH
INTERIM APPLICATION NO. 1501 OF 2020

1. Sumeet Jawaharlal Jain
   Age :- 39 Years, Occ : Business

2. Ramesh Jugraj Mehta
   Age :- 53 Years, Occ : Business
   Both at Office Address : Poonam Park,
   Vevoor, Taluka & Dist. Palghar. … **Applicants**

Versus

1. The State of Maharashtra
   Through Palghar Police Station.

2. Sonal N. Rathod
   Age :-Adult, Occ – Unknown,
   R At Shanti Apartment No.1
   C/403, Mathuradas Extension Road,
   Kandivli (W), Mumbai 400 067. ... **Respondents**

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO. 978 OF 2019
WITH
INTERIM APPLICATION NO. 1503 OF 2020

1. Sumeet Jawaharlal Jain
   Age :- 39 Years, Occ : Business

2. Ramesh Jugraj Mehta
   Age :- 53 Years, Occ : Business
   Both at Office Address : Poonam Park,
   Vevoor, Taluka & Dist. Palghar. ... **Applicants**

Versus

1. The State of Maharashtra
   Through Palghar Police Station.

2. Alpa Sanjay Wadhwana
   Age :-Adult, Occ – Unknown,
   R At A-303, Gohil Mansion,
   Iraniwadi Road No.2, Opp. Asian Bakery,
   Kandivli (W), Mumbai 400 067. ... **Respondents**

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO. 979 OF 2019
WITH
INTERIM APPLICATION NO. 1502 OF 2020

1. Sumeet Jawaharlal Jain
   Age :- 39 Years, Occ : Business

2. Ramesh Jugraj Mehta
   Age :- 53 Years, Occ : Business

Both at Office Address : Poonam Park,
Vevoor, Taluka & Dist. Palghar. **... Applicants**

Versus

1. The State of Maharashtra
   Through Palghar Police Station.

2. Vikram K. Patel
   Age :-Adult, Occ – Unknown,
   R At A-304, Ekta Nagar,
   Blue Oasis, Blue Empire Complex,
   Ekta Nagar, Kandivli (W), Mumbai 400 067. **... Respondents**

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Mr. Aabad Ponda, Senior Advocate a/w Mr. Prayag Joshi i/by Mr. Ashotosh R. Gole, Advocate for the Applicants in all Anticipatory Bail Applications and Interim Applications.

None for the Applicant in Interim Application No. 553 of 2019.

Mr. S. R. Agarkar, APP for the Respondent No.1 – State.

Mr. Mahesh V. Rajpopat, Advocate for Respondent Nos.2 in all Anticipatory Bail Applications.

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CORAM : PRAKASH D. NAIK, J.

DATE : 31st AUGUST, 2021

PER COURT:

1. The applicants are apprehending arrest in connection with C.R. Nos. I-26 of 2019, I-27 of 2019, I -28 of 2019 and I-29 of 2019 registered with Palghar Police Station, Dist. Palghar on 23rd January, 2019 for offences under Sections 406 and 420 of Indian Penal Code (for short "IPC") and Sections 3, 4 & 8 of Maharashtra Ownership Flats (Regulation of the promotion of construction, sale,

management and transfer) Act, 1963 (for short "MOFA Act") and Sections 3 & 4 of Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, (for short 'MPID Act'), pursuant to the directions of learned J.M.F.C. Palghar under Section 156(3) of Cr.P.C. in respective complaints filed by complainants.

2. The complainant in C.R. No. I-26 of 2019 which is subject matter of Anticipatory Bail Application No.976 of 2019 has alleged that the applicants are partners of partnership firm "M/s. Poonam Lifestyle". Agreement of sale for development of the lands was executed by the accused with the owners of lands Gat Nos. 66/1, 66, 67/1 and 68. The accused have launched the scheme of construction of the flats and shops of "M/s. Poonam Lifestyle" and made advertisement of the scheme. After getting information of the scheme the informant made inquiry with applicant No.1 and others and he agreed to purchase the flat for consideration amount of Rs.8,32,000/-. The applicants had promised that, if the entire amount is paid at one time, the purchaser will be exempted from paying stamp duty, registration fees, flat tax, service tax etc. The informant gave two cheques and paid the entire amount of Rs.8,32,000/- on 27th June, 2012. It was promised that the possession of the flat would be given within 24 months. However,

thereafter, the applicants and others avoided execution of agreement. In the year 2017, the agreement was executed in favour of the informant and promised that the possession of the flat would be handed over by July – 2017. However, the applicants have not handed over the possessions of the flat to the informant. The accused borrowed loan from the Bank of Baroda for construction of the buildings of "M/s. Poonam Lifestyle" project but they failed to pay the installments of the bank hence, the bank had attached the property of the project. In spite of paying the entire consideration amount, accused have not constructed the project and have not given possession of the flat.

3. The case of the complainant in C.R. No. 27 of 2019 which is subject matter of Anticipatory Bail Application No. 977 of 2019 is that the applicants are the partners of partnership firm "Poonam Lifestyle". After getting information of the scheme, the informant made inquiry with applicant No.1 and others and agreed to purchase the flat for consideration amount of Rs.8,32,000/-. The applicants had promised that if the entire amount is paid at one time, the purchaser would be exempted from stamp duty, registration fees, flat tax, service tax etc. The informant paid the entire amount by giving two cheques of Rs.8,32,000/- on 13 June,

2012. It was promised that the possession of the flat would be handed over within 24 months. However, thereafter, the applicants and others avoided to execute the agreement. In - 2017, the agreement was executed in favour of the informant and it was promised that the possession of the flat would be handed over till July – 2017. However, the possession of the flat was not handed over to the informant. The informant further came to know that the accused have borrowed the money from the Bank of Baroda for construction of the buildings and since they failed to pay the installment of the bank, the bank has attached the property of the project. In spite of paying the entire amount of consideration, the project was not constructed and the possession of the flat was not handed over to the informant.

4. The complainant in C.R. No. 28 of 2019 which is subject matter of Anticipatory Bail Application No. 978 of 2019 has alleged that the complainant made inquiry with applicant No.1 and others pursuant to the advertisement of the scheme and the complainant agreed to purchase the flat for consideration amount of Rs.7,60,000/-. The applicants had promised that on payment of entire amount at one point of time, the purchaser will be exempted from paying stamp duty, registration fees, flat tax, service tax etc.

The informant paid the entire amount of Rs.7,60,000/- in the year – 2014 to the applicants. It was promises that the possession would be be handed over within 24 months. However, thereafter, the applicants and others avoided to execute the agreement. In – 2017, the agreement was executed that promise to handover the possession of the flat in December – 2017. The applicants have not handed over the possession to the informant. Subsequently, the informant learnt that the accused have borrowed money from Bank of Baroda for construction of the buildings of “Poonam Lifestyle” project but they failed to pay the installments of the bank and the property of the project has been attached by the bank. In spite of paying the entire amount, the possession of the flat was not handed over to the complainant.

5. The complainant in C.R. No. 29 of 2019 which is subject matter of Anticipatory Bail Application No. 979 of 2019 has alleged that the informant had made inquiry with the accused and agreed to purchase the flat for consideration amount of Rs.7,84,000/-. The informant paid the entire amount of Rs. 7,84,000/- by cheque in the year 2013. It was promised that the possession would be handed over within 24 months. The accused avoided execution of agreement in favour of the informant. The

possession of the flat was not handed over.

6. The complainant Amit B. Parekh in C.R. No. 26 of 2019 had purchased flat in building No. 15, A-103. The complainant Sonal Rathod in C.R. No. 27 of 2019 had purchased the flat in building No.10, A-104. The complainant Alpa Wadhwana in C.R. No. 28 of 2019 had purchased the flat in building No.6, B-001 and the complainant Vikram Patel in C.R. No. 29 of 2019 had purchased the flat in building No.10, A-203.

7. The applicants had preferred applications for anticipatory bail in connection with all the complaints and the said applications were rejected by separate orders dated 18th April, 2019.

8. Learned Senior Advocate Mr. Aabad Ponda representing the applicants in all the applications with learned Advocate Mr. Ashotosh Gole has advanced several submissions in support of the relief sought in this applications. It is submitted that the building permission in respect to the project was issued on 1st August, 2012. Thereafter, the area of construction was reduced and fresh C.C. was issued on 6th June, 2016. The architect had issued the completion certificate in respect to building No.15. The project was registered with RERA. Application was made for water

connection. Steps were taken for installation of electricity. The work relating to building No.15, A, B, C & D wings is 100% complete. The delay had occurred on account of circumstances beyond the control of applicants. The environmental clearance was delayed. The Palghar Municipal Counsel had not issued occupation certificate. There was no intention to cheat. The construction in respect to all the buildings had commenced. Most of the buildings were completed. The bank has not taken physical possession of the project. The firm had initiated proceedings before Debt Recovery Tribunal. One time settlement offer was given to the Bank of Baroda. The accused firm had paid the amount of Rs.6,90,00,000/- to the bank. The offence under Section 406 of IPC is not made out. Considering the fact that efforts were made to complete the project of construction and since most of the buildings were almost completed, it cannot be alleged that there was intention to deceive. It is further submitted that the offence under the provisions of MPID Act is not made out. The firm of the accused cannot be termed as financial establishment as defined under the MPID Act. The Police had refused to take cognizance of the complaint, hence, the complainant had filed private complaint in which the directions were issued under Section 156(3) of Cr.P.C. The complainant had also initiated proceedings before the consumer Court. The applicant's firm had preferred Writ Petition before this Court. Wherein, one of the contentions was that when there is designated Court with powers of Magistrage under M.P.I.D. Act, cognizance taken and action initiated by learned JMFC is without jurisdiction. The said petition is admitted on 5th March, 2020. Relief of de-freezing the bank account was granted. It is submitted that construction in respect to the various project is completed to the extent of 100%, 60%, 90% and 80%. It is only on account of the circumstances which were beyond control of applicants. Some of the buildings could not be completed. The applicants are willing to refund the amount invested by the complainants and other investors. The applicants have filed additional affidavits dated 12th July, 2019, 14th July, 2020 and 22nd February, 2021 and relied upon several documents. It is submitted that custodial interrogation of the applicants is not necessary. The applicants had followed up with the Chief Executive Officer, Palghar Municipal Counsel for issuance of the occupation certificate. All documents are handed over to the investigating officer. The letter written by Palghar Municipal Counsel to EOW, Palghar dated 16th September, 2019 mentions the status of the construction and there is reference to the fact that some of the buildings were 100% completed. Reliance is placed on the decisions of the Supreme Court in the case of **State of Gujrat**

V/s. Jaswantlal Nathalal, AIR 1968 Supreme Court 700, wherein the Court has dealt with ingredients of Section 406 of IPC. It is submitted that in the light of the observations made in the paragraph 8 of the decision, wherein it was observed that mere transaction of sale cannot amount to an entrustment in support of the submissions of the applicants that the offence under Section 406 of IPC is not made out.

9. Learned APP submitted that intention of cheating is writ large. False promises were made to several persons, who had purchased the flats. It was promised that the possession will be handed over within stipulated time. They were induced to part with 100% consideration amount. There was deliberate delay in executing the agreements. In spite of accepting the entire amount, the possession of the flats are not handed over to the purchasers. Apart from the complainants and intervenors, there are several other purchasers of the flats, who had booked the flats by paying entire consideration. Loan was obtained from the Bank of Baroda by mortgaging the project. On failure of installments of the loan payment, the properties were attached. In spite of attachment of property, the accused had executed the agreement with the purchasers of flat. Assuming that the writ petition challenging the

provisions of MPID Act is pending before this Court, the complainant has independent right to initiate proceedings under Sections 406 & 420 of IPC and under the provisions of MOFA Act. The accused have received amount of Rs.5,62,44,946/- from 39 investors. The accused had obtained loan of Rs.14,50,00,000/- from Bank of Baroda. There are about 500 or more persons who had invested the amount in the said project and the amount in the crime may be enhanced. Occupation certificate has not been issued. The Police Sub Inspector, EOW, Palghar has filed affidavit in reply dated1st July, 2019 opposing the application for anticipatory bail. It is submitted that custodial interrogation of the applicant is necessary.

10. Learned Advocate for the complainants/intervenors submitted that the offence is of serious nature. The purchasers were induced to book the flat. Although, entire payment was made towards purchase of flat, the possession was not handed over to them. The quality of the construction is poor. The dishonest intention is writ large. Sections 406 & 420 of IPC is made out. The complainant has filed affidavit opposing the application for anticipatory bail. It is submitted that except making false promises no action was initiated by the applicants to handover the

possession. Although the promises were made there was no willingness to comply the same. All the other projects in the vicinity for construction had started, completed and ready with requisite permissions to occupy from the relevant authorities. But only the present project i.e. Poonam Park is incomplete. There were various requirements for obtaining permissions, clearance certificate from various competent authority which was not taken by the applicants for the project. The said requirement was never disclosed by them to the complainants and others. It was not mentioned in the allotment letter nor in the agreement that there are pending permissions to be obtained by the applicants from various authorities for the said project. Even after receiving bank loan of Rs.14,50,00,000/-, accused accepting huge amount from purchasers. The applicants could not clear the dues of the material supplier, contractors etc. and did not take permissions from various authorities. The applicants have themselves contented that the environmental clearances were not given. Without obtaining mandatory permissions, the applicants have induced various purchasers to purchase the flats and the consideration was accepted. Some of the purchasers had paid the entire payment in the year – 2012. However, the promises were not fulfilled. He pointed out letters dated 9th August, 2012 and 18th April, 2015 addressed to complainant Amit B. Parekh. Wherein, it was mentioned that he has been allotted flat No.104 on the first floor in B-wing for lump-sum price of Rs.8,42,000/- in the proposed project of Poonam Park. Regular agreement will be executed after the detailed particulars are sought from him. It was also mentioned that the payments are presently made by him to "M/s. Poonam Lifestyle" on account of loans and advances. The regular agreement of sale would be entered into between them wherein the payments would be made by him will be treated as payments towards purchase of flat. Possession will be given after 24 months. In the letter dated 18th April, 2015 it was mentioned that Flat No.103 is allotted on the first floor in A-wing. It was also stated that presently the payment made by him is on account of loans and advances.

11. I have perused the documents on record including various affidavits filed by respective parties. It is pertinent to note that the informant and others had invested huge amount to purchase the flats from year – 2012 and they were promised that the possession of flats would be given within two years. The applicants had failed to complete the project. Before launching the project the applicants ought to have taken all the sanctions, permissions from the competent authority. They were supposed to

anticipate the cause of delay for completing the project and thereafter, accused should have entered into agreements by making things clear to the purchasers. Apparently, the accused had kept the purchasers in dark by inducing them to invest money in the project for purchase of the flat.

12. The contention of the applicant is that several buildings constructed by them are on the verge of completion. It is pertinent to note that since last several years possessions has not been handed over to the purchasers. The occupation certificate is not yet granted to the applicants. It is the contention of the applicants in the application itself that the commencement certificate was issued in 2012. Subsequently, the area of construction was reduced and fresh commencement certificate was issued in 2016. The environmental clearances were not granted for the project. The submission of learned counsel for the applicants that provisions of Sections 406 and 420 cannot be considered. The investigation is in progress. The complainants had invoked Sections 406, 420 of IPC, and the provisions of MOFA Act. It appears that the writ petition challenging under the provisions of MPID Act is pending in this Court. However, there is no interim relief to not proceed with the investigation under the provisions of MPID Act.

The allotment letters produced by learned Advocate for intervenors refers to the averment that the payments made by purchaser were presently marked as on account of Loans and Advances. The affidavit filed by the EOW, Palghar indicates that the applicants are partners of partnership firm "M/s. Poonam Lifestyle". They had entered into the agreement for development of land. The owner of the land bearing Gat Nos. 66/1, 66, 67/1 & 68 of Village Vevoor, Taluka & Dist. Palghar. They had launched the scheme of construction of flats and shops. "M/s. Poonam Lifestyle" had made development of the scheme and after getting information of the scheme the complainant and others made inquiry about the project. They agreed to purchase the flats. Promises were made that if the entire amount is paid at one time the purchaser will be exempted from paying stamp duty, registration fees, flat tax, service tax etc. The complainant in all these cases have parted entire payment. In the year 2012 and 2014 apparently agreements were executed. Subsequently, after causing delay the agreements were executed and promises were made to handover the possession within stipulated time which has not been done. The accused cannot give execuses that the competent authority has not granted permissions. It is their responsibility that all requisite permissions were obtained before inducing purchasers to purchase flats. The investigation revealed that in 2011, the complainant and others received allotment letters from the accused. Thereafter, again they changed the measurement of the flats and consideration and issued fresh allotment letter and thereafter registered the agreement for sale with investors. The said agreements were registered in 2017, in which it was admitted by the applicant/accused that the possession would be handed over on or before July – 2017. During the investigation it was transpired that the accused had received amount of Rs.5,62,44,946/- from several investors. During investigation, it was transpired that the accused had obtained loan from Bank of Baroda and the entire project of "Poonam Park" was mortgaged with bank for the loan of Rs.14,50,00,000/-. Since the applicants/accused failed to repay the loan amount within stipulated period, the Bank of Baroda had initiated proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). The District Collector Palghar had initiated the directions to attach the property and handover the possession of the whole scheme to the bank. The possession notice was also affixed on 3rd December, 2016 on the said property. The applicants have however contended that they have initiated the proceedings before the SARFAESI and offered one time settlement. It is also contented that Six Crores were paid by them to the bank. However, the fact still remains that loan which was obtained was to the tune of Rs.14,50,00,000/- and the entire loan has not been repaid. It is pertinent to note that the investors were not aware that the entire project has been mortgaged and without understanding encumbrances, they had parted an amount towards the purchase of flats. The affidavit filed by the EOW mentions that there are near about about 500 or more persons who had invested their amount in the said project and therefore the amount misappropriated could enhance. By order dated 17th December, 2020 this Court had vacated the interim protection granted to the applicant. The applicants had moved the Honb'le Apex Court and considering the fact the application is due for hearing before the High Court, it was directed that no coercive action be initiated against applicant.

13. For all the reasons stated above, the applications are devoid of merits. The applications are required to be rejected.

14. Hence, I pass the following order:

ORDER

i) Anticipatory Bail Application Nos. 976 of 2019, 977 of 2019, 978 of 2019 & 979 of 2019 are rejected and stand disposed of accordingly;

ii) All Interim Applications stand disposed of accordingly.

(PRAKASH D. NAIK, J.)

15. At this stage, learned counsel for the applicants submits that interim protection was running in favour of the applicants for a long period of time and the same may be continued for a period of 4 weeks to enable the applicants to move before the Hon'ble Apex Court for relief. The submissions is strongly opposed by learned APP and learned counsel for the intervenor.

16. Considering the fact that the interim protection was granted to the applicants and it was in operation for a long period of time, the interim protection shall continue for a period of four weeks.

(PRAKASH D. NAIK, J.)