

BHARAT
DASHARATH
PANDIT

Digitally signed by
BHARAT
DASHARATH
PANDIT
Date: 2021.10.14
14:55:09 +0530

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

ANTICIPATORY BAIL APPLICATION NO.2308 OF 2021

Mahesh Bhagwandas Patel and Ors. Applicants

Vs.

The State of Maharashtra Respondent

Mr.Niranjan Mundargi i/b Ms.Vinaya G. Padwal for the
Applicant

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

Mr.Prathamesh K. Gaikwad for the Intervenor /
Respondent no.2

CORAM: NITIN W. SAMBRE, J.

DATED : OCTOBER 13, 2021

P.C.

. Heard.

2. The applicants are interse real brothers who are seeking pre-arrest bail in Crime No.249/2021 punishable u/s.420, 504, 506, 34 of the Indian Penal Code and u/s.13 of Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

3. The applicant no.1 is the Sole Proprietor of the

Firm / Developer whereas applicant nos.2 and 3 are the real brothers who are assisting him in the management of the Firm. The case of the prosecution against the applicants is that the applicants promised delivery of developed property after having accepted consideration by issuing allotment letters which are not honored till date. The cheques issued towards refund of the amount were dishonoured, as such the offence in question.

4. Mr.Mundargi, the learned counsel for the applicants on instructions submit that by 02.11.2021 an amount of Rs.55,00,000/- shall be deposited with the Investigating Officer which can be shown to be recovered in the offence in question. He further gave an offer of settlement which is not accepted by the counsel for the Complainant as regards the registration of document in relation to developed property, consisting of flat of two bed rooms to be executed within a period of one week from today and the possession of which will be handed over within two years from today. The said proposal is rejected by the Complainant.

5. In the aforesaid background, having heard the contention as canvassed by the counsel for the applicants, as regards the role played by each of the applicant, it is noticed that there is no direct involvement of applicant no.2 and 3, and same cannot be inferred from the available papers. Admittedly, the firm with whom the complainant has invested the amount / entered into an agreement for purchase of developed

property, is a proprietary concern of Applicant no.1 and entire transaction is carried out by Applicant no.1 and the complainant.

6. In the aforesaid background, prima facie, involvement in the offence in question can be only inferred of Applicant no.1 and not of Applicant nos.2 and 3, who at the most could be termed as persons helping Applicant no.1 in management of business.

7. As such, Application of Applicant no.1 stands rejected.

8. Deposit of amount of Rs.55,00,000/- with the Investigating Officer by 02.11.2021 is accepted as an undertaking to this court.

9. If the amount as undertaken is not deposited, the protection ordered in favour of Applicant nos.2 and 3 shall cease to operate without further reference to the court and the Investigating Officer shall be at liberty to take the Applicant nos.2 and 3 in custody for further investigation.

10. Applicant nos.2 and 3 shall be released in Crime No.249/2021 punishable u/s.420, 504, 506, 34 of the Indian Penal Code and u/s.13 of Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 registered with Daighar Police Station in the event of arrest upon

executing P.R. Bond of Rs.25,000/- each with one or more sureties in like amount.

11. Both the Applicants shall attend the Investigating Officer on 21st, 23rd, 26th and 28th October, 2021 between 10 and 12 p.m. and thereafter, as and when directed by the Investigating Officer.

12. Applicant nos.2 and 3 shall neither influence the prosecution witness in any manner nor tamper with the evidence.

13. Applicant Nos. 2 and 3 shall furnish the particulars of their place of residence and contact details to the Investigating Officer of the Police Station concerned within seven days from today.

14. Application as such stands partly allowed in above terms.

(NITIN W. SAMBRE, J.)