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

ANTICIPATORY BAIL APPLICATION NO. 1632 OF 2019

NITIN HIRJI THAKKAR AND ANRAPPLICANTS

V/s.

THE STATE OF MAHARASHTRARESPONDENT

**WITH
CRIMINAL APPLICATION NO. 1162 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO. 1632 OF 2019**

JACK SYLVESTER MENDESAPPLICANT

IN THE MATTER BETWEEN

NITIN HIRJI THAKKAR AND ANRAPPLICANTS

V/s.

THE STATE OF MAHARASHTRARESPONDENT

**WITH
CRIMINAL APPLICATION NO. 1161 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO. 1632 OF 2019**

APPASAHEB BABANRAO SURYAWANSHIAPPLICANT

IN THE MATTER BETWEEN

NITIN HIRJI THAKKAR AND ANRAPPLICANTS

V/s.

THE STATE OF MAHARASHTRARESPONDENT

WITH
CRIMINAL APPLICATION NO. 1160 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO. 1632 OF 2019

BALU SHAMBA SHIRODKARAPPLICANT

IN THE MATTER BETWEEN

NITIN HIRJI THAKKAR AND ANRAPPLICANTS

V/s.

THE STATE OF MAHARASHTRARESPONDENT

Mr. Ganesh Gole i/b Mr. Aarif Ali M. Ali for applicants
Mr. Mahesh Vishwakarma a/w Anagha D. Tandel i/b Vishwakarma &
Associates for intervenor
Mr. A. R. Patil APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 11, 2021.

P.C.:

1] Applicants are seeking pre-arrest bail in C.R. No. 342/2019 registered with Chikhli Police Station for Offences punishable under Sections 420, 406, 506 of the Indian Penal Code.

2] Prosecution case against the applicant is, M/s. Akruti Estate Pvt. Ltd, a developer firm of which applicants are partners entered into an agreement of sale of developed property (flats/tenaments) to the complainants after having received part consideration. Said developed property was to be delivered to complainant and other flat owners by December 2016. Having received almost about 80% - 90% of the consideration for last about 4 years, neither the construction in its entirety is completed nor the occupancy certificate is received. It is further claimed that complainants were required to occupy the premises that too which were not completed in all respects. Out of the total consideration agreed for the complainant of Rs. 43,00,000/-, Rs. 38,75,000/- was received by the applicants and Rs. 1,50,000/- to lawyer towards stamp duty, registration etc. In spite of above, the chart as is reflected in the record depicts that having received almost 80% of the consideration, the scheme is not completed which has resulted into filing of the complaint.

3] According to learned counsel for the applicant, neither taxes which the complainant had agreed to pay nor balance consideration

has been paid. As a consequences, applicants were unable to complete the construction of the building as per schedule mentioned in the agreement. He would invite my attention to the short payments made by various flat purchasers. As such, he would urge that there is civil dispute in relation to the property with the parties like the complainant and that being so, applicants are entitled for protection by ordering pre-arrest bail.

4] My attention is also invited to a civil suit filed by the applicants through its firm against one prospective purchaser Samadhan Suryavanshi. According to learned counsel, it is not the case of the prosecution that applicants have cancelled the booking of the flat owners, rather the flat owners have trespassed in the property and taken possession and trying to use the property without paying complete consideration to the applicants.

5] Learned APP who is assisted by complainant and other similarly placed flat owners would oppose the claim as according to them, development scheme was neither completed within the scheduled

time nor occupancy certificate till date is obtained from the competent authority. According to learned APP, applicants have cheated persons like the complainant. As a consequences, total 10 flat owners are prompted to lodge/support the complaint against the applicants.

6] I have considered submissions canvassed.

7] As per the agreement which is produced on record, applicants have promised delivery of the property to the parties like the complainant after having received consideration. The fact remains that in the case of the complainant, already almost 90% of the consideration is received. Though it is claimed that consideration is due and receivable from other bookings, however, the fact remains that applicants have not executed registered agreement in favour of some of the booking holders. As a consequence, they were unable to process their request for sanctioning the loan. In every case, applicants have received almost more than 75% of the consideration from the flat owners and the fact that neither lawful possession nor

completion could be noticed in the present case.

8] As such, necessary ingredients of the offence under which applicants are booked viz. cheating and criminal breach of trust can be prima facie made out.

9] In view of above, since there is sufficient material to infer prima facie involvement of the applicants in the crime in question, application fails, stands rejected.

10] In view of dismissal of anticipatory bail application, connected criminal applications stand disposed of.

[NITIN W. SAMBRE, J.]

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