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

ANTICIPATORY BAIL APPLICATION NO. 2776 OF 2021

MAHESH PANDURANG NAIKAPPLICANT

V/s.

THE STATE OF MAHARASHTRARESPONDENT

**WITH
INTERIM APPLICATION NO. 2876 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 2776 OF 2021**

KIRIT HIMATLAL MORVADIYAAPPLICANT

IN THE MATTER BETWEEN

MAHESH PANDURANG NAIKAPPLICANT

V/s.

THE STATE OF MAHARASHTRARESPONDENT

Mr. Vijay Kurle for the applicant
Mrs. Pranoti Pawar for intervener
Mr. A. R. Kapadnis APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE: DECEMBER 9, 2021.

P.C.:

1] Applicant is seeking pre-arrest bail in C.R. No. 94/2020

registered with Malad Police Station for offence punishable under Sections 406, 420 r/w Section 34 of the Indian Penal Code.

2] Case of the prosecution is, complainants with an intention to purchase house, has paid part consideration to the firm of which accused is a partner. It is claimed that complainant booked 4 bungalows, possession of which was assured to be handed over within 15 months i.e. by mid 2012.

3] As the project got delayed, complainant was asked to wait, however, after completion of major part of the project, neither the possession was handed over nor the amount of consideration accepted was returned. As such, complaint came to be lodged resulting into registration of the offence.

4] Contentions of Mr. Kurle, learned counsel for the applicant are, document which is relied on for the purpose of alleging offence of forgery against the applicant is in fact formed to be basis by the complainant seeking delivery of the developed property or in alternate

refund of the amount. As such, he claims that there is no element of forgery in the matter. His other contentions are, project, for certain reasons which are beyond control of the applicant, got delayed and as such, promise of delivery of the bungalow within 15 months from 2010 was not honoured. He is not disputing the fact that other two partners namely Deepak Shah and Vishal Shah have resigned in 2014 and the responsibility to develop and hand over possession of the property was with the applicant as entire project stood vested in the applicant.

5] Mr. Kurle would urge that even today, applicant has every bonafides to deliver the bungalows as promised provided escalation cost should be born by the applicants and further period of 10 months, be granted to honour the commitment.

6] Mr. Kurle would also invite my attention to the contents of F.I.R., so as to claim that civil dispute is given colour of an offence.

7] Learned APP assisted by counsel for the intervener would

oppose the claim and submit that the very conduct of the applicant of not honouring the demand and the responsibility undertaken, has resulted into registration of the offence. It is claimed that involvement of the applicant in the offence in question is quite apparent and that being so, it is prayed that application be rejected.

8] Additional affidavit is tendered by the applicant during the course of hearing. Applicant has stated that in another 10 months period, developed property will be handed over to the applicant i.e. 4 bungalows as was promised in 2010, provided burden of additional cost is to be borne by the complainant. It is further mentioned in the said affidavit that if the possession is not handed over within 10 months, the amount shall be refunded with 10% interest.

9] The aforesaid vague assurance made in the affidavit is nothing but a course adopted by the applicant to escape from the clutches of investigation. Applicant lack bonafides as he has no intention to hand over possession of developed property as can be inferred prima facie upon reading of contents of affidavit.

The counsel for the complainant has made categorical statement that balance consideration is ready, to be paid to applicants at the time of passing title and possession. Her claim that promise referred above made by the applicant of delivery of possession in ten months after payment of extra cost is nothing but an eye wash.

10] The fact that project commenced in 2010 and complainant intentionally is made to wait till the moment of lodging of F.I.R. so as to have developed property in their possession at much higher cost can be inferred from the contents of F.I.R.

11] It appears that applicant developed 60 bungalows handed over possession of the same to other persons who have entered into an agreement subsequent to the claim of the complainant. The amount paid by the complainant was used by the applicant since 2010 till this date. However, Mr. Kurle pointed out that said developed property viz. 60 bungalows were handed over to other buyers who have paid additional charges.

12] This Court is sensitive to the fact that while executing project of such nature, some latitude should be given on the issue of time limit or the period within which developed property was to be delivered, however, inspite of the fact that applicant has delivered possession of 60 bungalows to other similarly placed persons and the complainant is left out inspite of having received part consideration, prima facie satisfies the very ingredients of Section 406 of the Indian Penal Code.

13] Though this Court has given an opportunity, the applicant is arm twisting the complainant thereby claiming extra cost in view of escalation in the cost of construction. It cannot be inferred that execution of the project got delayed at the behest of complainant, rather it is the applicant whose failure has resulted into delayed completion of the project. As such, applicant cannot be permitted to take advantage of his own misdeeds.

14] As far as the claim put forth by Mr. Kurle that a civil dispute is given colour of criminal offence is concerned, it is worth to mention

here that the present remedy is in addition to other remedies available to the applicant. As such, it cannot be said that it is not open for the complainant to invoke right provided under criminal law.

15] Delay caused in execution of the project viz. inter-se dispute between the partners will be of hardly any consequence in the facts of the present case particularly when the applicant was knowing that he has to deliver developed property like the one he has delivered to other similar placed persons to the complainant and which he has failed to.

16] Learned APP submits that there are two criminal antecedents against the applicant viz. C.R. No. 1329/2018 registered with Virar Police Station for offence punishable under Sections 420 r/w 34 of the Indian Penal Code and C.R. No. 89/2020 registered with Virar Police Station for offence punishable under Sections 420 r/w 34 of the Indian Penal Code.

17] In the aforesaid background, prima facie involvement of the applicant in the commission of serious economic offence can be inferred. Application fails, stands rejected.

18] In view of disposal of anticipatory bail application, intervention application also stands disposed of.

[NITIN W. SAMBRE, J.]

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