

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2072 OF 2019

Ashok Rajaram Gupta ..Applicant

V/s.

The State of Maharashtra ..Respondent

WITH

INTERIM APPLICATION NO.315 OF 2019

IN

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2072 OF 2019

Smita Narayan Pawar ..Applicant

IN THE MATTER BETWEEN

Ashok Rajaram Gupta ..Applicant

V/s.

The State of Maharashtra ..Respondent

WITH

INTERIM APPLICATION NO.302 OF 2019

IN

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2072 OF 2019

Sadhana Surendra Thorve ..Applicant

IN THE MATTER BETWEEN

Ashok Rajaram Gupta ..Applicant

V/s.

The State of Maharashtra ..Respondent

WITH

INTERIM APPLICATION NO.1279 OF 2019

IN

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2072 OF 2019

Satish Mahadev Avhad ..Applicant

IN THE MATTER BETWEEN

Ashok Rajaram Gupta ..Applicant

V/s.

The State of Maharashtra ..Respondent

WITH

INTERIM APPLICATION NO.633 OF 2019

IN

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2072 OF 2019

Divya Ashok Kukreja ..Applicant

IN THE MATTER BETWEEN

Ashok Rajaram Gupta ..Applicant

V/s.

The State of Maharashtra ..Respondent

WITH

INTERIM APPLICATION NO.882 OF 2019

IN

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2072 OF 2019

Shantaram Tukaram Gavhane ..Applicant

IN THE MATTER BETWEEN

Ashok Rajaram Gupta ..Applicant

V/s.

The State of Maharashtra ..Respondent

WITH

INTERIM APPLICATION NO.299 OF 2019

IN

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2072 OF 2019

Savita Arun Bombe ..Applicant

IN THE MATTER BETWEEN

Ashok Rajaram Gupta

..Applicant

V/s.

The State of Maharashtra

..Respondent

WITH

INTERIM APPLICATION NO.300 OF 2019

IN

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2072 OF 2019

Dinesh Nanji Mukwana & Anr.

..Applicants

IN THE MATTER BETWEEN

Ashok Rajaram Gupta

..Applicant

V/s.

The State of Maharashtra

..Respondent

WITH

INTERIM APPLICATION NO.604 OF 2019

IN

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2072 OF 2019

Neelesh Pansare

..Applicant

IN THE MATTER BETWEEN

Ashok Rajaram Gupta

..Applicant

V/s.

The State of Maharashtra

..Respondent

Mr.Prasad Panchal a/w Mr.Jigar Agarwal, Ms.Neha Rane and Ms.Ranvi Patil for the Applicant in ABA No.2072 of 2019.

Mr.R.R. Varma for the Applicant./Intervenor.

Mr.Bhooshan Mahadik i/b Mr.C.G. Patil for the Applicant in IA No.604 of 2019.

Ms.Swapana Kode for the Applicants in IA Nos.302 and 299 and 300 of 2019.

Mr.Chaitnya Kotnis a/w S. Beharkar for the Applicant in IA No.315 of 2019.

Mrs.Veera Shinde, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 4 SEPTEMBER 2021

P.C.

. The applicant apprehending arrest in connection with investigation of crime No.498 of 2018 of Ghatkopar Police Station, under Section 420 and 406 of Indian Penal Code read with Section 3,4 and 5 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 is seeking anticipatory bail.

2. The aforesaid offence came to be registered on 18th April 2018 on the complaint lodged by Swapnil Namdeo Auti whose parents were residents of Ganesh Wadi Co-op Housing Society at Ghatkopar(West). In the year 2005 the redevelopment of the said society was proposed under the Slum Rehabilitation Act ('SRA' for short) and M/s.Ankita Builders and Developers of which the applicant is a proprietor was appointed as developer. There were about 355 tenements, out of which 180 were demolished in the year 2013 so as to undertake the

redevelopment, The occupants were accommodated in transit camp. The material allegation is that the complainant was assured by the applicant to provide a 280 sq.ft. Commercial tenement in the saleable component and it was also represented that if the booking is made within 90 days, the tenement would sold at a concessional rate. According to the complainant he paid an amount of Rs.21,30,000/- till 12 November 2013 towards the tenement namely shop No.24 admeasuring about 300 sq.ft., in the saleable component. The complainant paid Rs.5,70,000/- in cash, for which no receipt was passed. In short according to the complainant the applicant failed to complete the project and to deliver the possession of the tenement as agreed inspite of the receipt of consideration. According to the complainant the applicant had passed a cheque dated 12 November 2013 for Rs.37,69,200/- which was dishonored. Thus according to the complainant, he has been cheated by the applicant. Upon registration of the offence the investigation is stated to in progress.

3. I have heard the learned counsel for the applicants and the learned Additional Public Prosecutor and the learned counsel for the complainant as well as the intervenors who are the other purchasers of different tenements in the saleable component. With the assistance of the learned counsel for the parties I have gone through the record.

4. The record discloses that interim protection was granted to the applicant on 1 October 2019, in view of the statement made on behalf of the applicant that he will deposit a total amount of Rs.4 Crores before this Court. Paragraph 3 of the order dated 01 October 2019 sets out the schedule of such deposit, in installments. The amount was undertaken to be deposited on or before 23 December 2019. The first installment of Rs.50 Lakhs was to be deposited on or before 11 October 2019. As the applicant defaulted in depositing the said installment, the interim protection was vacated by order dated 17 October 2019. On 7 November 2019 the applicant again expressed willingness to deposit Rs.50 Lakhs by Demand Draft and also undertook to deposit the second installment on or before 27 November 2019. On the basis of the said statement this Court directed that the applicant shall not be arrested till 6 December 2019. The time to deposit Rs.50 Lakhs was extended by 3 days by order dated 13 November 2019. The applicant deposited the amount of Rs.50 Lakhs on 15 November 2019. However, defaulted in the matter of payment of subsequent installments and hence by order dated 6 December 2019 the interim protection was finally vacated. Thus the applicant is without protection since 6 December 2019.

5. The learned counsel for the applicant pointed out that the Competent Authority under the SRA by an order dated

25 October 2017 has terminated the development rights of the applicant w.e.f. 29 October 2017. As per the order passed by the Competent Authority, the applicant is required to be reimbursed of the actual expenses, by the successor developer which has not been done. The learned counsel pointed out that the fact that the commencement certificate could not be obtained till 2015 has contributed to the delay and there is no intention on the part of the applicant since inception not to implement the project and to deliver the tenements.

6. The learned Additional Public Prosecutor pointed that complainant and several others who are the intervenors here, have been duped in the matter. According to the Additional Public Prosecutor total amount involved is about 12 crores and the applicant has defaulted on multiple occasions in implementing the project and to repay/return the amount although undertaken. In such circumstances, the custody of the applicant is necessary for the purposes of investigation.

7. The learned counsel for the intervenors also submitted that in the circumstances the applicant is not entitled to restoration of the protection which has twice been vacated by this Court.

8. I have carefully considered the circumstances and the submissions made. It is not necessary to go into the question as to the circumstances in which the development rights of the applicants were terminated by the Competent Authority SRA. According to the applicant the order of the SRA is subject matter of challenge before this Court. Suffice it to mention that since 2013 till 25 October 2017 the applicant has been unable to implement the project and to deliver possession of the tenements to the prospective purchasers including the complainant and the intervenors who have purchased the tenements in the saleable component. There are multiple occasions on which the applicant has defaulted in the matter of the repayment of the amount. Even the cheque issued by the applicant, is dishonored. This Court had granted indulgence twice on the basis of the statement/undertaking to deposit the amount of Rs.4 Crores which has not been complied with.

9. In such circumstances, it is not possible to accept that a case for restoration of the protection is made out in the absence of any subsequent development favorable to the applicant. In my considered view, the paramount consideration is the proper investigation at this stage, for which the custody of the applicant is necessary. In the result, the Criminal Application is hereby dismissed.

10. In view of dismissal of the application, all pending intervention applications are disposed of as infructuous.

C.V. BHADANG, J.

**NILAM
SANTOSH
KAMBLE**

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