IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3259 OF 2019

Sohil Rahim Shaikh @ Rahul Sharma .. Applicant
Versus
The State of Maharashtra .. Respondent

…

Mr. Pankaj N More for the applicant.
Mr.R.M. Pethe, APP for the State.
PI Sunil Patil present.

CORAM: BHARATI DANGRE, J.
DATED : 19th MARCH 2021

P.C:-

1 The present Bail Application is filed on a complaint being registered with Satpadi Police Station against the applicant resulting into C.R.No. 18 of 2019 invoking Sections 420, 464, 465, 467, 468, 471, 474 of the IPC along with Section 3 and 4 of the The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

2 The complaint being instituted by one Mohd. Hasan Attar who allege that he came in contact with the present

applicant as a proprietor of one Sai Home Builders and Developers. The applicant provided him the necessary information about the upcoming project and projected all the amenities and facilities to be made available in the said project by means of various brochures. The rate of the dwelling unit was also fixed and it is alleged that if the possession of the dwelling units was not delivered within a stipulated period, the amount was also assured to be returned back with some interest. Resultantly, the complainant invested his amount into the housing project belonging to the applicant and booked two premises admeasuring 250 sq.m each; one in his own name and another in the name of his wife and invested Rs.2,81,250/- per dwelling unit. It is alleged that he issued cheques in favour of the said person and agreement was also notarized. In spite of the said investment being made, since the possession of the assured premises was not delivered within the stipulated period, the complainant approached the police station alleging forgery, resulting into registration of offences under Section 420, 464, 465, 467, 468, 471 and 474 of the IPC.

3 The provisions of MPID Act have also been invoked. On the submission advanced by the learned counsel for the applicant, *prima facie*, it can be seen that the provisions of the MPID which require the involvement of a 'financial institution' and acceptance of 'Deposit' by said institution by way of a scheme

or arrangement and the term ‘deposit, as understood as being defined under sub-clause (c) of Section 2 of MPID Act and exclude the advance against order for goods or services and in any case, since the amount invested is not by way of an arrangement stipulating specified time for return or otherwise, either in form of cash or in kind or in the form specified the service as indicated by said definition clause, the provisions of MPID may not be attracted against the accused person.

4 However, as far as the other sections under the IPC are concerned which have been invoked in the subject FIR, it can be clearly seen from the material compiled in the charge-sheet that the applicant has posed a false identity and the learned APP has invited my attention to the various documents recovered from the present applicant at the time of his search on 20th June 2019. In all the documents, his name is reflected as ‘Sohil Rahim Shaikh’ and all the documents belonging to the applicant including the Aadhar Card, PAN card, driving licence, the debit cards of the three banks as well as the Aadhar card establish his identity as such. The agreement which is entered into by the applicant with the complainant is in the name of Rahul Sharma. This agreement executed on 14th August 2017 is the reason for the complainant to approach the police station resulting into registration of FIR and though prima facie it can also be seen that it is not the agreement for sale which is sought to be executed by

filing of the said FIR which cannot be done through the police machinery but during the course of investigation, the Investigating Agency has noted that the applicant has used his dubious identity for the purpose of entering into the transaction with the investors.

The charge-sheet also reflect that the total amount that has been invested is to the tune of Rs.40,29,451/-. It is not only the complainant but there are other investors which have also recorded their statement in sync with that of the complainant.

5 Apart from this, the other two accused persons who are also arraigned as accused in the same C.R, include one Savita Kamlakar Bharat obtained the Power of Attorney from a tribal woman in respect of the property on which the construction was to take place and the said land, being land belonging to a tribal require the necessary formalities to be complied with by approaching the authorities before it could have been dealt with in any manner. The applicant is instrumental in the entire transaction in procuring the said land from Survey No. 821 and without necessary permission being obtained for its use, approached the municipal authorities for obtaining the NOC. However, the final construction is not complete and the occupancy certificate not granted, probably for the reason that the land could not have been dealt with, in a manner forbidden by

law by the accused persons, including the present applicant, in absence of necessary permission.

6 In such circumstances, though the charge-sheet has been filed and investigation is completed, the applicant, in my considered opinion, who is a mastermind in the controversy which had duped 12 investors to the tune of Rs.40,29,451/- and taking into consideration the background of the investors who are persons belonging to the lower rung of the Society and since it has become necessary to detain the applicant in custody.

Considering the nature of the accusation and that he has not only duped the investors by presenting a rosy picture of the project but also faked the identity by obtaining Adhar cards in both names. The explanation offered by the applicant that he got married to a women from other religion, and therefore converted himself, do not inspire confidence, since he has changed his name, he ought to have followed a legally prescribed mode, by effecting a change in the Government Gazette which is not the case here. The applicant is involved in a serious offence of forgery for the purpose of cheating and therefore, this do not warrant his release on bail.

7 Application is thus rejected.

SMT. BHARATI DANGRE, J

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