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

ANTICIPATORY BAIL APPLICATION NO. 2673 OF 2019

Ezriel Raymond Penkar and anr. ..Applicants
vs.
The State of Maharashtra and anr. ..Respondents

Mr. Rishi Bhuta i/b Mr.Ujjwal Gandhi, for Applicants.
Smt.M.R.Tidke, APP for State – Respondent.
Mr.Sharad R.Nimale, PSI present.
Mr.Anand i/b Mr.R.Karnik, for Intervener/ original complainant.

CORAM : M. S. KARNIK, J.

DATE: OCTOBER 4th, 2021

P.C. :

1. Heard learned Counsel for the applicants. The applicants pray for pre-arrest bail in respect of C.R. No. 55 of 2018 registered by MIDC Police Station under sections 406, 409, 420, 120(B), 467, 468, 471 and 34 of Indian Penal Code. Applicant No.2 is the daughter of applicant No.1. Applicant No.1 claimed to be the office bearer of the Society in question which was to be developed by developer. Briefly stated it is the case of the original complainant – intervener that in respect of the said project, the flat nos. 211 and 214 (2 BHK flats) were agreed to be sold by the applicants to the

complainant. Accordingly, the complainant paid an amount of Rs.30,00,000/- to the applicants and even the share certificate in respect of the said flats were transferred in favour of the complainant. This was some time in the year 2008. The complainant was busy in his day to day activities and was always under the impression that possession of flats would be handed over to the complainant by the applicants as upon the payment of the entire consideration, even share certificates were transferred in the name of the complainant. To the utter shock of the complainant, it came to his notice that said flats are sold by developer in favour of third person and they have been put in possession of the flat nos. 211 and 214. The reason stated was that the authorisation in respect of the building was only granted upto the 2nd floor and therefore the developer had to accommodate the allottees of the third floor. The FIR dated 08/02/2018 was therefore filed for cheating and other related offence.

2. During the pendency of this application, parties entered into memorandum of understanding on 05/11/2019. A compilation has been tendered by learned Counsel for the applicants. The memorandum of understanding dated 05/11/2019 records that the

complainant and the applicants decided to amicably settle the dispute upon the applicants paying to the complainant a sum of Rs.1,06,00,000/-. Later on, by virtue of memorandum of understanding dated 25/03/2020, this amount was enhanced to Rs.1,55,00,000/-. The document enclosed reveals that the amount of Rs.1,55,00,000/. has been paid over to the complainant. My attention is invited to an affidavit filed by the complainant Mr.Hemant Kumar Gupta in the quashing petition that was filed wherein the complainant has stated that he has received an amount of Rs.35,00,000/- and two cheques of Rs.70,00,000/- and 50,00,000/- have been issued. In the said affidavit, it has been stated that the complainant has no objection if the applicants are granted anticipatory bail in lieu of the cheques received and subject to assurance that the cheques are encashed.

3. No doubt, affidavit has been filed in a separate proceeding relating to the quashing of FIR. This Court by order dated 20/07/2021 refused to quash the FIR as according to the complainant, some of the terms of the memorandum of understanding are not complied with. This Court observed that the consent for quashing should have been a voluntary act of the parties

with their volition to agree for the settlement without any duress or coercion. Suffice it to observe that so far as considering the present application for pre-arrest bail, in terms of the memorandum of understanding, the amount of Rs. 1,55,00,000/- has in fact paid over to the complainant as the document enclosed along with the compilation reveals. The applicants have been granted interim protection by this Court since 06/12/2019 and they have co-operated with the investigation. Learned Counsel submits that the applicants will co-operate with the investigation even hereafter.

4. Learned Counsel appearing on behalf of the original complainant submits that as noted by this Court in the quashing proceedings, some of the terms of the memorandum of understanding are yet to be complied with. However, though the application is opposed by the complainant, having regard to the aforesaid facts, custodial interrogation of the applicants is not necessary. Considering the nature of the dispute and that the complainant is already in receipt of the sum of Rs.1,55,00,000/- as per memorandum of understanding, nature of dispute appears to be a civil one and hence, the interim protection granted by this Court operating since 06/12/2019 deserves to be confirmed. Hence, the

following order.

ORDER

- i) The interim protection granted stands confirmed.
- ii) In the event of the arrest of the applicants in connection with the C.R. No. 55/2018 registered with MIDC Police Station, Andheri, the applicants shall be released on bail on their executing PR bond in the sum of Rs. 25,000/- each with one or more sureties in the like amount.
- iii) The applicants shall co-operate with the investigation and attend the concerned police station as and when called.
- iv) The applicants shall furnish their latest residential address and telephone numbers to the Investigating Officer.

6. Application is disposed of.

(M.S. KARNIK, J.)