

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 366 OF 2022

Azar Aayub Bhaldar ..Applicant
V/s.
The State of Maharashtra ..Respondent

WITH
INTERIM APPLICATION NO. 1010 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 366 OF 2022

Sunil Sahebrao Kadekar ..Applicant

IN THE MATTER BETWEEN

Azar Aayub Bhaldar ..Applicant
V/s.
The State of Maharashtra & Anr. ..Respondents

Mr. Prashant P. Raut, for the Applicant.
Mr. A. R. Kapadnis, APP for the Respondent / State.
Mr. Nilesh V. Pol, PSI Khandeshwar Police Station present.

CORAM : C.V. BHADANG, J.
DATE : 30 MARCH 2022

P.C.

. The Applicant, apprehending arrest, in connection with
investigation of Crime No.217/2020 of Police Station

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Khandeshwar, Navi Mumbai, under Section 420 and 406 of IPC and under Section 4A and 13A of the Maharashtra Ownership Flats (Regulations of Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA, for short), is seeking anticipatory bail.

2. The aforesaid crime is registered on the basis of the complaint dated 15 September 2020 lodged by Nitesh Krushna Jawalkar. He states that he had purchased a flat / tenement from the co-accused Mahesh Somiskar alias Mohammad Salim Warsi for a consideration of Rs.19,50,000/- and certain amount was paid by way of earnest. There was yet another purchaser namely Madhavkumar Retiraman, resident of Kamothe who had also purchased the similar tenement and had paid booking amount of Rs.8,01,500/-. Thus, the complaint was lodged claiming that inspite of a total amount of Rs.26,86,475/- being paid to the co-accused Mahesh Somiskar of Galaxy Builders and Developers, the possession of the flats, as agreed has not been delivered.

3. I have heard the learned counsel for the parties. Perused record.

4. It appears that the co-accused Mahesh Somiskar was released on regular bail by the learned Sessions Judge on the basis of the affidavit filed by the informant stating that the parties have amicably settled the dispute and the informant having expressed

no objection for release of the co-accused Mahesh Somiskar on bail.

5. Learned APP has pointed out that even the undertakings given in the said affidavit have not been complied with by the co-accused Mahesh Somiskar.

6. Be that as it may, indisputedly, Galaxy Builders and Developers is a Partnership Firm of which the Applicant is one of the Partners alongwith Mahesh Somiskar. It is also not disputed that the building was proposed to be constructed on Survey No.26/02 at Devad Vikaswadi, Tehsil Panvel and the proposed flats / tenements were sold as a part of the proposed building namely Galaxy Heights.

7. Learned APP has today pointed out that not only that the Complainant has not been provided with the flat as agreed, there are multiple transactions entered into by the Applicant and the co-accused in respect of the said tenements. It is pointed out that there are in all 60 flats / tenements constructed. However, there are as many as 112 transactions entered into by the Applicant and the co-accused. It is thus pointed out that there are multiple sales effected in respect of the same tenement and the investigation would reveal that there are several others who are affected. Learned APP also pointed out that the building itself is unauthorised, in as much as, it is constructed without obtaining

construction license from the competent authority City and Industrial Development Corporation (CIDCO) has also issued notice dated 3 April 2019 for demolition of the construction being unauthorised.

8. The learned counsel for the Applicant has pointed out a construction license (at page No.211 of the compilation) by which the Gram Panchayat Vichumbe, Panvel, District Raigad has granted permission.

9. Learned APP has countered this saying that the Planning Authority is CIDCO and not Gram Panchayat.

10. At this stage, it is neither necessary nor possible in an Application under Section 438 of Cr.P.C. to look into any such dispute about the Planning Authority. The fact remains that there is a possibility of several others who may be affected as the learned APP has pointed out that there are as many as 112 transactions, although the tenements are only 60. In such circumstances, I do not find that a case for grant of pre-arrest bail is made out as the custodial interrogation may be warranted. The Criminal Application is accordingly rejected.

11. The Interim Application is also disposed of.

12. At this stage, the learned counsel for the Applicant seeks extension of the interim relief. Upon hearing the learned counsel for the parties, the interim relief granted on 11 February 2022 shall continue to operate for a period of two weeks from today.

(C.V. BHADANG, J.)