IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.415 OF 2021

WITH
INTERIM APPLICATION NO.796 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.415 OF 2021

1. Shailesh Dhirahlal Shah

2. Ruchit Shailesh Shah

3. Chintan Shailesh Shah .... Applicants

versus

State of Maharashtra .... Respondent

…….

- Mr.Sanjeev P. Kadam i/b. Bhanudas L. Jagtap, Advocate for Applicant.
- Mr.Deepak Pandey, Advocate for Intervenor.
- Smt.Rutuja Ambekar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 15th FEBRUARY, 2022

P.C. :

1. The Applicant is seeking anticipatory bail in connection with M.E.C.R.No.7/2020, registered with Juhu Police Station, Mumbai, under sections 406, 420, 465, 468, r/w 34 of the

Indian Penal Code and under sections 3, 5, 11, 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA).

2. The FIR is a result of order passed by the learned Magistrate u/s 156(3) of Cr.P.C., on the complaint filed by one Harish Lalwani and three others against the Applicant's partnership firm.

3. Heard Mr.Sanjeev P. Kadam, learned counsel for the Applicant, Mr.Deepak Pandey, learned counsel for the Intervenor and Smt.Rutuja Ambekar, learned APP for the State.

4. It is mentioned in the complaint that the accused made attractive representations about their project namely Deepa Darshani, situated at Malad (W). The accused assured about the completion of project without delay.

5. The complainants decided to take one flat each of 711 sq.ft in that project. Harish Lalwani paid Rs.40 lakhs. Preeti Lalwani paid Rs.25 lakhs. Sanjay Lalwani paid Rs.27 lakhs and Prerna Lalwani paid Rs.20 lakhs to the accused against the booking of their respective flats. It is their case that on receipt of those payment, the accused issued allotment letters dated 01/04/2015. In the complaint, it is further mentioned that, the complainants were regularly following up with the accused for progress of the project and every time, the accused gave false assurance about the development of project. But there was no progress. It had not even started. After continuous follow up, the accused executed promissory note dated 09/11/2017 and agreed to return the invested amount on or before 31/07/2018 along with 15% interest. In January 2018, the accused firm executed four declarations-cum-undertaking for similar effect. However, the amount was not paid. The project had not started. They were deprived of their money as well as flats. On this basis FIR is lodged.

6. Learned counsel for the Applicant submitted that it was a loan transaction and therefore averments made in the complaint are not true. Complainants in that private complaint were not the flat purchasers but were the investors. Majority of the amounts are repaid. He submitted that in this background the Applicant's custody is not necessary. In any case, all the documents are signed by Applicant No.1 alone. There cannot be vicarious liability as far as two other Applicants are concerned. There are no specific averments against those two Applicants anywhere.

7. Learned APP as well as learned counsel for the Intervenor opposed this application. They submitted that the promissory note had shown that the Applicants had acknowledged the receipts of total amount of Rs.1.12 crore in all. All the Applicants were active partners of the firm and therefore they are equally liable to be punished. However, both, the learned counsel for the Intervenor and the learned APP accepted that all the documents are actually signed by the Applicant No.1 only.

8. I have considered these submissions. As mentioned in the complaint, the receipt of the amount which is the subject matter, is acknowledged by written documents. Therefore at this stage, it is not possible to observe that it was a loan transaction not the transaction for sale of flats. The question remains, whether custodial interrogation of these three Applicants is necessary. As far as the Applicant No.1 is concerned, he has signed the documents. The notice issued on behalf of the complainant which is at page No.55 of the Intervention Application at Ex.F does indicate that the main allegations are against Applicant No.1. The first paragraph mentions that the complaint was made to the police in respect of fraud by Applicant No.1 and other partners of M/s Sarvoday Builders and Developers. Further averments in that notice specifically refer to the representation made by the Applicant No.1 alone. Thus, though the partnership firm may be the ultimate beneficiary, the main role is attributed to the Applicant No.1. All the documents are signed by him. The representation was allegedly made by

him. Therefore custodial interrogation of the Applicant Nos.2 and 3 is not really necessary. The custodial interrogation of the Applicant No.1 alone would serve purpose of investigation. Hence Applicant Nos.2 and 3 can be protected by an order of anticipatory bail.

9. Hence, the following order :

ORDER

(i) The application of Applicant No.1 Shailesh Dhirahlal Shah, is rejected.

(ii) In the event of their arrest in connection with M.E.C.R.No.7/2020, registered with Juhu Police Station, Mumbai, the Applicant No.2 Ruchit Shailesh Shah and Applicant No.3 Chintan Shailesh Shah, are directed to be released on bail on their furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each, with one or two sureties each, in the like amount.

(iii) The Applicant Nos.2 and 3 shall attend the concerned Police Station as and when called and shall cooperate with the investigation.

(iv) Anticipatory Bail Application stands disposed of accordingly.

(v) With disposal of the Anticipatory Bail Application, the Interim Application also is disposed of.

(vi) It is made clear that these observations are made only for decision of this application. All the contentions of both sides are left open to be decided at the appropriate stage.

(SARANG V. KOTWAL, J.)