

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

ANTICIPATORY BAIL APPLICATION NO. 512 OF 2022

Vijayanarayan Shitlaprasad Upadhyay ..Applicant

v/s.

The State of Maharashtra . ..Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 454 OF 2022**

Anandkumar Sabhajit Dubey ..Applicant

v/s.

The State of Maharashtra . ..Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 607 OF 2022**

Bharat Jogindernath Malik ..Applicant

v/s.

The State of Maharashtra . ..Respondents

Mr. Vijay Narayan Upadhyay for the Applicant in ABA/512/2022.

Mr. Ganesh Gole i/b. Ritesh Ratnami for the Applicant in ABA/454/2022.

Mr. R.V.Sipahi Makani for the Applicant in ABA/607/2022.

Mrs. Rutuja Ambekar, APP for the State.

Mr. Gopal Rajput from Khadakpada Police Station.

**CORAM : ANUJA PRABHUDESSAI,J.
DATED : 6th APRIL, 2022.**

P.C.

1. These applications under Section 438 Cr.P.C. are filed by the

aforesaid Applicants seeking pre-arrest bail in C.R.No.I-32 of 2022 registered with Khadakpada Police Station, Kalyan for offences under Section 420, 406 r/w. 34 of Indian Penal Code and Section 3, 4 and 11 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

2. Heard Mr. Gole, learned Counsel for the Applicant and Mrs. Ambekar, learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

3. The aforesaid crime was registered pursuant to the FIR lodged by Mr. Tushar Bhalerao. The Applicants herein are the partners of Shri Balaji Developers, which is engaged in construction and development business. The Complainant had booked two flats i.e. flat nos.905 and 906, on the 9th floor of the building which was being constructed by the said partnership firm, for total sale consideration of Rs.43,20,000/-. The Complainant had paid an amount of Rs.8,00,000/- on 23.05.2017. The Complainant alleged that the possession of the flats was to be given by November 2020. Since the Applicants, who are the partners of Balaji Developers, have not handed over the possession within the stipulated time, the Complainant lodged a complaint. Pursuant to the said complaint, crime came to be registered against the Applicants.

4. The complaint is filed solely on the ground of delay in handing over possession of the flats which were booked by the first informant.

Prima facie ingredients of cheating are not made out.

5. Be that as it may, the project is registered with RERA till 28.11.2022. As on date, 6 floors of the building have been constructed. Learned Counsel for the Applicant has placed on record letter dated 18.3.2022, wherein the Complainant has stated that he is ready and willing to take two flats i.e. flat no.605 and 606 on the 6th floor, in lieu of flat nos.905 and 906. Learned APP, under instructions, states that the Complainant has indeed entered into such settlement.

6. Learned Counsel for the Applicant has stated that they have acceded to the said request, and the Complainant will be put in possession of the said two flats upon completion of construction within the stipulated time, and upon payment of balance amount.

7. Moreover, the Applicants were on interim bail since 31.2.2022. They have reported to the Investigating officer and have been interrogated. Under the circumstances, this is not a case which would justify custodial interrogation. Furthermore, the Applicant have roots in the society and there is no possibility of the Applicants absconding or thwarting the course of justice. Hence the Application is allowed on the following terms and conditions:-

(i) In the event of arrest of the Applicants in C.R.No.I-32 of 2022 registered with Khadakpada Police Station, Kalyan, the Applicants be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) each with one or two solvent sureties in the

like amount, to the satisfaction of the Investigation Officer;

(ii) The Applicants shall provide their permanent as well as temporary address, if any, and their contact details to the Investigating Officer;

(iii) The Applicants shall not change their residential address without prior intimation to the Investigation Officer;

(iv) The Applicant shall not interfere with the complainant and the other witnesses in any manner.

(ANUJA PRABHUDESSAI, J.)

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