

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

ANTICIPATORY BAIL APPLICATION NO. 501 OF 2022

Sanjay Punamiya @ Jain ..Applicant

v/s.

The State of Maharashtra . ..Respondents

**WITH
INTERIM APPLICATION NO. 1050 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.501 OF 2022**

Ramesh Achaldas Jain ..Applicant/Intervenor

In the matter between

Sanjay Punamiya @ Jain ..Applicant

v/s.

The State of Maharashtra . ..Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 502 OF 2022**

Sanjay Punamiya @ Jain ..Applicant

v/s.

The State of Maharashtra . ..Respondents

**WITH
INTERIM APPLICATION NO. 1047 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 502 OF 2022**

Shailesh Ramesh Jain ..Applicant

In the matter between

Sanjay Punamiya @ Jain ..Applicant

v/s.

The State of Maharashtra .

..Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 503 OF 2022**

Sanjay Punamiya @ Jain

..Applicant

v/s.

The State of Maharashtra .

..Respondents

**WITH
INTERIM APPLICATION NO.1049 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 503 OF 2022**

Rakesh Ramesh Jain

..Applicant

In the matter between

Sanjay Punamiya @ Jain

..Applicant

v/s.

The State of Maharashtra .

..Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 505 OF 2022**

Sanjay Punamiya @ Jain

..Applicant

v/s.

The State of Maharashtra .

..Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 506 OF 2022**

Sanjay Punamiya @ Jain

..Applicant

v/s.

The State of Maharashtra .

..Respondents

WITH

INTERIM APPLICATION NO.1048 OF 2022

Hitesh Ramesh Jain ..Applicant

In the matter between

Sanjay Punamiya @ Jain ..Applicant

v/s.

The State of Maharashtra . ..Respondents

**WITH
INTERIM APPLICATION NO.1045 OF 2022**

Abhishek Ramesh Jain ..Applicant

In the matter between

Sanjay Punamiya @ Jain ..Applicant

v/s.

The State of Maharashtra . ..Respondents

Mr. Kapil R. Dave for the Applicant.

Mr. Tushar Kochale for the Intervenor in all applications.

Mrs. A.A.Takalkar, APP for the State.

**CORAM : ANUJA PRABHUDESSAI,J.
DATED : 11th APRIL, 2022.**

P.C.

1. These are the applications under Section 438 Cr.P.C for pre-arrest bail in C.R.Nos. 406 of 2019, 400 of 2019, 404 of 2019, 405 of 2019 and 407 of 2019 registered with Borivali Police Station for offences under Section 420, 406, 467, 468, 471 r/w. 34 of Indian Penal Code.

2. Mr. Dave, learned Counsel for the Applicant submits that the Applicant is not involved in committing the offence of cheating and that

there was no intention to deceive since inception. He claims that the project could not be completed because of the dispute with the owners of the land. He submits the Applicant has not received any monetary benefit, and that the money paid by the Complainants has gone in the account of the partnership firm, of which the Applicant was one of the partners. He further contends that the other accused have already been granted bail. He further contends that the Applicant had issued cheques in favour of the complainants only to show his bonafides. He submits that this is not a case which warrants custodial interrogation.

3. Per contra, learned APP and Mr. Kochale, learned Counsel for the Intervenor-Complainant submit that the Applicant had entered in a MOU by suppressing the fact that there was litigation between Munshi Family and Rajan Mehta and that the status quo order was operating since the year 2007. It is further submitted that the Applicant and others had entered into MOU without Sanction Plan and LOI by SRA. He submits that the Applicant and others have received total amount of Rs.91 lakhs from the Complainants with an assurance that they would be put in possession of the premises which were to be constructed in the project under development. Learned Counsel Mr. Kochale further states that the Applicant herein was a signatory to the compromise letters, whereunder they had agreed to repay the amount. That the cheques issued by the accused have been dishonoured and proceedings under

Section 138 of Negotiable Instruments Act have been initiated.

4. It is further submitted that the applications filed by the Applicants were rejected by the Sessions Court in the year 2019. The Applicant absconded for two years, and filed a fresh application before the Sessions Court only after filing of the chargesheet against the co-accused. He submits that the conduct of the Applicant does not justify grant of bail.

5. I have perused the records and considered the submissions advanced by learned Counsel for the respective parties. The aforesaid crimes were registered pursuant to the FIRs lodged by Ramesh Achaldas Jain and his four sons. A perusal of the FIRs prima facie reveals that the complainants were desirous of purchasing residential premises. The co-accused Abhay Bhandari represented to the complainants that he and the other partners of M/s. Madhav Builders had undertaken development of two SRA chawls in property under CTS No.556, 556/1, 557, 557/1 to 558/1, 558/2 of Village Kanheri, Kulupwadi, Borivali (East). They were shown Annexure II and other relevant documents approved by the concerned Authorities and were informed that all the necessary approvals were obtained.

6. The Complainant agreed to purchase flats in one of the towers proposed to be constructed by the Applicant and other partners of M/s.

Madhav Builders. On 2.5.2011, the Applicant and the other co-accused went to the house of the Complainants with Memoranda of Understanding. The Complainants signed the said MOU and paid earnest money to the Applicant and the co-accused Abhay Bhandari. It is alleged that the Complainants paid total amount of Rs.91 lakhs towards the sale consideration. The Applicant acknowledged receipt of the money and issued Allotment letters.

7. The Applicant and the co-accused did not commence the work till 2014. When the complainants visited the site, they learnt that the land belonged to F.E.Dinshaw Trust and some of the rooms were with one Rajan Mehta. The Complainants were informed that Madhav Builders and Developers have no right to develop the said land and that the concerned Authority has not issued any approval in its favour. The Applicant and the other partners did not refund the money despite assurance. Hence the Complainants lodged the FIRs, based on which the aforesaid crimes came to be registered.

8. The records prima facie indicate that as per the survey records the land which was proposed to be redeveloped belongs to F.E.Dinshaw Trust. The Agreement dated 26.04.2011 between the partnership firm and the Rehman & Ganesh Kripa Co-operative Housing Society also indicates that the Applicant was well aware of this fact. It is also to be

noted that the owner had not consented for development of the said property, Annexure II had not been issued, and layout plan was not prepared. The letter dated 2.4.2018 issued by the Slum Rehabilitation Authority also states that no permission was granted to Madhav Builders and Developers for construction of the building, that they had not submitted the proposal, and no LOI has been issued in their favour.

9. It is also seen that earlier pursuant to the FIR lodged by Rajan Mehta, against the partners of Madhav Builders, MECR 8 of 2007 was registered against Ishak Karim Charolia and the partners of M/s. Madhav Builders for preparing false, forged and fabricated power of Attorney and documents in respect of the said property. The Applicant and the other partners also suppressed the fact that the dispute in respect of the said property was pending and status quo order was operating since 2007. Despite the pending dispute and without obtaining consent from the owner, the Applicant and others induced the Complainants in paying an amount of Rs.91 lakhs by falsely representing that they have undertaken development under valid sanction and approval from the concerned authorities. This prima facie, is deception from inception.

10. It is not in dispute that the Applicant and the other co-accused had signed a letter agreeing to refund the money, pursuant to which cheques were issued in favour of the Complainants. The said cheques have been

dishonoured for insufficient funds. Issuance of cheques without there being sufficient funds cannot be considered to be a bonafide act, as it is sought to be contended.

11. It is also pertinent to note that the co-accused Abhay Bhandari had filed an affidavit before this Court giving an undertaking to repay the amount to the Complainants. The said statement has not been honoured and the bail application filed by the co-accused was dismissed. The records prima facie reveal that the Applicant and the other co-accused have misappropriated the amount which was paid by the Complainants towards price of the premises.

12. The records further reveal that the application for pre-arrest bail was dismissed by the learned Sessions Judge in the year 2019. The Applicant did not approach this Court for pre-arrest bail. He evaded arrest for two long years, and filed a fresh application for pre-arrest bail before the Sessions Court after filing of the chargesheet against the co-accused. The conduct of the Applicant would not justify exercise of discretionary powers in his favour.

13. Considering the nature of accusations, as well as the conduct of the Applicant, in my considered view the Applicant is not entitled for pre-arrest bail. Hence the Applications are dismissed. Interim

applications stand dismissed in view of dismissal of the anticipatory bail applications.

14. Interim protection granted in favour of the Applicant is extended for a period of four weeks from the date of uploading of the order.

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(ANUJA PRABHUDESSAI, J.)