

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

ANTICIPATORY BAIL APPLICATION NO.631 OF 2020

Saif Gulam Abbas Kallan
and others Applicants
Versus
The State of Maharashtra Respondent

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WITH

ANTICIPATORY BAIL APPLICATION NO.3155 OF 2021

Anil Ram Tinani Applicant
Versus
The State of Maharashtra Respondent

.....

WITH

**INTERIM APPLICATION [STAMP] NO.514 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.631 OF 2020**

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WITH

**INTERIM APPLICATION [STAMP] NO.512 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.631 OF 2020**

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WITH

**INTERIM APPLICATION [STAMP] NO.513 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.631 OF 2020**

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IN
ANTICIPATORY BAIL APPLICATION NO.631 OF 2020

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WITH
INTERIM APPLICATION NO.3060 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.631 OF 2020

Mr. Sudeep Pasbola, Advocate i/b. Shoaib I. Memon, for the Applicants in ABA/631/2020.

Mr. Murtaza Nazmi, Advocate i/b. Shaheen Khan, for the Applicant in ABA/3155/2021.

Mr. Shahbaz Khan Pathan, Advocate i/b. Abhinandan M. Waghmare, Advocate for the intervenor in all IAs.

Mr. Ajay Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th JANUARY, 2022
[Through Video Conferencing]

P.C. :

1. Both these applications are decided by this common order because they arise out of the same investigation. For the sake of convenience, the applicants are referred to by their names in the following order wherever necessary.

2. Heard Shri Sudeep Pasbola, learned counsel for the applicants in ABA/631/2020, Mr. Murtaza Nazmi, learned counsel for the applicant in ABA/3155/2021, Shri Ajay Patil, learned APP for the State and Mr. Shahbaz Khan Pathan, learned counsel for the intervenors.

3. The applicants are seeking anticipatory bail in connection with C.R.No.56/2020 dated 25.1.2020 registered at Dindoshi Police Station, Mumbai under Section 420 read with 34 of the Indian Penal Code and Sections 13 and 14 of the Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963.

4. The FIR is lodged by Dr. Devidas Raut on 25.1.2020. He has stated that in the year 2012, he wanted to purchase a house. He made enquiries. He came to know that a project by name “Hazel Homes” was going on Daftary Road. The building was being constructed by M/s. Nine Globe Builders. The FIR mentions that the Directors of M/s. Nine Globe Builders were Ashish Mehta, Naresh Jain, Paras Jain and Pranav Mehta. The site office of the builder was on the ground floor. He went there. There, he met the Directors of M/s. Urban One Realty. These Directors were applicants Anil Tinani and Saif Kallan. The FIR mentions names of Directors of M/s. Urban One Realty as the applicant Raychel D’Souza, applicant Anil Tinani and applicant Zoheb Khan. The applicant Zoheb Khan, according to the prosecution, is the husband

of the applicant Raychel D'Souza. According to the prosecution case, applicant No.1 Saif Gulam Kallan is also one of the Directors of M/s. Urban One Realty. The informant discussed his plan to purchase a flat with Saif Kallan and Anil Tinani. The informant liked the location and he decided to purchase the flat No.602B admeasuring 435.18 sq. mtrs carpet area. He booked the flat for Rs.73,21,000/-. The FIR mentions that in January 2013 he handed over Rs.32,28,400/- in cash to the applicants Anil Tinani and Saif Kallan. He was given the allotment letter dated 28.1.2013 issued by the Urban One Realty. According to that letter, the price was fixed at Rs.42,92,600/-. The FIR mentions that subsequently he made further payments through cheque; and in all, he made payments of Rs.48,21,000/- to M/s. Urban One Realty for which he was not given receipt. He was after Anil Tinani and Saif Kallan for executing the agreement, but, the agreement was not executed and they started avoiding him. He was not given any document regarding plan of the building. The informant wanted to take loan on the flat. For that, the agreement was necessary but the agreement was not executed and it was not registered. Thereafter

the informant came to know that said flat No.602B was actually sold by M/s. Nine Globe Builders to one Dharmendra Mehta through a registered agreement dated 31.12.2014. Thereafter, Dharmendra Mehta vide agreement dated 10.11.2015 sold the same flat to M/s. K.J. Realtor. The informant realized that he was cheated. The FIR mentions names of nine persons from whom money was accepted for allotting different flats viz. Flat Nos.601A, 601B, 302B, 602B, 802A, 802B, 802B, 1402B and 1702B. The flats were not given though various amounts were accepted from them. In all, the applicants herein had accepted almost Rs.6,61,56,441/- but no agreement was entered into and the flats were not handed over. On this basis, the FIR is lodged.

5. Shri Pasbola, learned counsel for the applicant invited my attention to the agreements between M/s. Nine Globe Builders and Urban One Realty. The first agreement was dated 24.10.2011. It was executed between M/s. Nine Globe Builders and Urban One Realty. In that agreement the applicant Raychel D'Souza was described as the Sole Proprietor of Urban One Realty. In the agreement, Urban One Realty was described as 'Co-Developers' and

M/s Nine Globe Builders was described as 'Developers'. In the agreement, it was mentioned that the co-developers were to develop and carry out the development work. The co-developer were to get 4410 sq. of wall to wall carpet area free of costs by allotment of residential flats. The co-developers had rights to sell, transfer or assign that area and the developers had retained his right of refusal. Subsequently additions were made to the agreement by executing further agreements in which the area was increased to '6567 sq. ft'. In one of the agreements, the flats which were allotted to the co-developers were specifically mentioned as 302B, 601A, 601B, 602A, 602B, 701B, 801A, 801B, 802A, 802B.

6. According to Shri Pasbola pursuant to these agreements the applicants in ABA No.631/2020 had entered into various transactions with the flat purchasers. Subsequently, the flat numbers were changed by M/s. Nine Globe Builders unilaterally by issuing letters to Urban One Realty on 11.10.2019 and instead of these flats, other flats were substituted. Therefore, according to Shri Pasbola it was beyond the control of the applicants in ABA No.631/2020 to give effect to the earlier transaction, but, they were

willing to given alternate flats to the flat purchasers and, therefore, there was no element of cheating and there was no intention to cause wrongful loss to any of the flat purchasers.

7. Shri Pasbola emphasized that only Raychel D'Souza was described as the 'Sole Proprietor' of the proprietorship firm Urban One Realty and, therefore, the others cannot be held responsible; and in any case, even the applicant Raychel D'Souza cannot be made responsible because M/s. Nine Globe Builders had changed the allotted flats.

8. Shri Pasbola submitted that the flats are actually sold by M/s. Nine Globe Builders and, therefore, the applicants cannot be held responsible for the same.

9. Shri Nazmi had only one submission to make. He submitted that the applicant Anil Tinani was merely an employee of Urban One Realty and he was not a Director. The amount, which he had accepted, was accepted on behalf of the company and not in his personal capacity. He is not benefited from this transaction and, therefore, his custody is not necessary. He even cannot be made as

an accused.

10. Learned APP strongly opposed these applications and produced the investigation papers before me. He also relied on the order passed by a co-ordinate bench of this Court (Coram: Nitin W. Sambre, J.) wherein the application of the co-accused Ashish Mehta was rejected. In that order dated 26.11.2021 passed in Criminal Bail Application No.3639/2021, it was observed that the structure developed by that co-accused was without any commencement certificate or sanction from the Planning Authority. Thus the construction was illegal and, therefore, the application was rejected.

11. Apart from that, learned APP Shri Ajay Patil relied on the record to show that 'Urban One Realty' and 'Urban One Realcon Private Limited' were in fact the names used interchangeably by the accused to suit their purposes. Page-22 of the compilation, filed by Shri Ajay Patil, which is taken on record; shows that a receipt was issued in the name of one of the flat purchasers Rekha Pradeep Agarwal and signed by the signatory of Urban One Realty, but it

was issued on the letter-head of 'Urban One Realcon Pvt. Ltd.'. Thus, all the accused were connected with these two entities. He submitted that there are monetary transactions *inter se* between all the accused.

12. I have considered these submissions. The important consideration, at this stage, is as to whether the applicants were connected with Urban One Realty. Though the agreements, mentioned hereinabove, referred to the co-developers as Urban One Realty, which was described as a Proprietorships Firm, the record produced before this Court by the investigating agency shows that in fact all the accused were interchangeably using both these entities i.e. Urban One Realty and Urban One Realcon Pvt. Ltd..

13. The investigation record shows that Urban One Realcon Pvt. Ltd had following Directors from the year 2011 on wards. They were : applicant Abdul Zoheb Khan, applicant Raychel D'Souza, applicant Saif Kallan, Mohd. Fahat Aziz, applicant Anil Tinani. Thus, all the applicants before me are shown as Directors of that particular entity during the relevant period. Therefore, there is

no force in the submissions made by either of the learned counsel that the applicants had nothing to do with these entities and have nothing to do with the entire transactions.

14. As mentioned earlier, according to the prosecution case, the entire building is unauthorized. The plans were sanctioned for 18 flats and they entered into 70 transactions for sale of 18 flats. Obviously, the entire transactions are fraudulent. The applicants' role is described in the FIR as well as in the investigation carried out so far. Even after accepting money, agreements were not executed and possession was not given. Their custodial interrogation is absolutely necessary. Many victims have suffered monetary losses. No case for grant of anticipatory bail is made out. The applications are rejected.

15. With disposal of the main applications, nothing survives in the interim applications and same are also disposed of.

16. At this stage, learned counsel for the applicants in ABA No.630/2020 submitted that the interim order granted earlier may be continued for a further period considering spread of COVID-19

pandemic. Considering seriousness of allegations against the applicants, I am not inclined to extend the stay. However, the investigating officer will take all precautions and follow all the Standard Operating Procedure [SOP] which are mandatory.

(SARANG V. KOTWAL, J.)

Deshmane (PS)