IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 566 OF 2022

Ravindra Ratanlal Jain ..Applicant

v/s.

The State of Maharashtra . ..Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 567 OF 2022

Kiran Babulal Raval ..Applicant

v/s.

The State of Maharashtra . ..Respondents

Mr. Ashok Bhatia for the Applicant.
Mr. Ninad for the Intervenor
Mrs. A.A.Takalkar, APP for the State.

CORAM : ANUJA PRABHUDESSAI,J.
DATED : 26th APRIL, 2022.

P.C.

1. These applications under Section 438 Cr.P.C. are filed for pre-arrest bail in C.R.No.116 of 2020 registered with MHB Colony Police Station for offences under Section 420 r/w. 34 of Indian Penal Code.

2. Mr. Bhatia, learned Counsel for the Applicants, submits that the Applicants are not involved in commission of the said crime. He contends that the agreement was between the Complainant and the erstwhile partners, and that the Applicants cannot be held vicariously

liable for any offence committed by the partnership firm or by the erstwhile partners. Learned Counsel for the Applicants further states that the construction could not be completed in view of the status quo order passed by this Court in the year 2013. The first informant entered into settlement with the co-accused Abhay Bhandari under letter of settlement dated 8.2.2018, pursuant to which he has been allotted a flat in V.M.Heights. Learned Counsel for the Applicants states that the case does not justify custodial interrogation and hence the Applicants are entitled for bail.

3. Learned APP submits that the Applicants herein are the partners, who had assured the first informant that the construction was in progress. She has also stated that the Applicants had signed the MOU dated 21.04.2015 wherein they had agreed to refund the amount of Rs.25,00,000/- to the Complainant. She submits that no LOI was issued in favour of the partnership firm and they had not obtained any permission or license from the concerned authorities. It is further submitted that the flat in respect of which the Agreement is executed, is in possession of some other person and that the statement of Mhatre, Builder/Developer of V.M.Heights reveals that said Abhay Bhandari has not paid the consideration in respect of the said flat, which is allegedly given to the Complainant in lieu of the money received by Madhav Builders. She states that the Applicants and the other partners are

involved in similar crimes and that they have defrauded several purchasers. She submits that considering the above facts and circumstances, this is not a fit case for grant of pre-arrest bail.

4. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

5. The aforesaid crime was registered pursuant to the First Information Report lodged by Amar Pande, who was the Managing Director of MIDC and Adviser of Consumer Affairs, 601. He retired in the year 2010. He decided to purchase a residential premises from his retirement benefits. He was introduced to the co-accused Abhay Bhandari, one of the partners of Madhav Builders. The co-accused called him to his office and introduced him to the other partners including the applicant herein. In a meeting with Abhay Bhandari and other partners, they informed him that a Project Excellency Towers was under construction at Kanehri, which was likely to be completed in two years. He agreed to purchase flat on the 15th floor of the building for Rs.52,00,000/-. He transferred Rs.25,00,000/- in the account details of which were provided by Abhay Bhandari.

6. In the year 2012, when he visited the site he noticed that no construction was being carried out. Abhay Bhandari avoided receiving

his calls. When he visited the office of Madhav Builders, he met the other partners including the applicant herein. They assured him that the work was going on in full swing and demanded further payment. They also informed him that Abhay Bhandari was busy obtaining approvals and sanctions. They avoided accompanying him to the site.

7. The Complainant realized that the building was not being constructed and the partners were avoiding to return the money. When he threatened to lodge police complaint, they assured to refund the amount with interest and sought one month time. On 30.11.2015, Abhay Bhandari and the other partners gave a written assurance and gave him a blank cheque. Later they avoided receiving his calls. Finally, Abhay Bhandari agreed to transfer a flat in V.M.Heights in his name, in lieu of the flat in Excellency Towers. He was introduced to Bhushan Mali as a proprietor of V.M.Heights. He was informed that Abhay Bhandari had invested Rs. 38 lakhs in a flat in the said project and agreed to transfer the flat in his name. Accordingly, an agreement for sale was executed in the name of the daughter of the complainant. But he is not being allotted the letter of Allotment. The complainant therefore lodged the FIR alleging that he was induced to pay Rs.25,000/- and further deceived into entering into an agreement with V.M. Heights.

8. A perusal of the FIR and other records prima facie indicate that

Abhay Bhandari and the other partners of Madhav Builders had induced the complainant to pay Rs.25,00,000/- under a pretext that Project–Excellency Towers was under constructions and the project was likely to be concluded within two years. Such false assurance was given and money was received despite the fact that LOI was not issued, plans were not sanctioned and the appropriate authority had not issued license/sanctions in respect of the said project. Hence, the contentions that the project was stalled due to the status quo order passed in the year 2013 in a petition not concerning to the Applicants or other partners is devoid of merits.

9. Learned Counsel for the Applicants has relied upon the decision of the Apex Court in ***Sham Sundar & Ors Vs. State of Haryana & Ors. CDJ 1989 SC 263***, wherein the Hon'ble Supreme Court has held thus:-

> *8. .. The essential characteristics of a firm is that each partners is a representative of other partners. Each of the parners is an agent as well as a principle. He is an agent insofar as he can bind the other partners by his acts within the scope of the partnership agreement. He is a principal to the extent that he is bound by acts of other partners. In fact every partner is liable for an act of the firm. Section 2(a) of the Partnership Act defines an "act of a firm" to mean any*

act or omission by all the partners, for by any partner or agent of the firm which gives rise to a right enforceable by or against the firm.

9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statue takes that also within its fold. Section 10 does not provide for such liability. It does not make the partners liable for the offence whether they do business or not.

10. *It is therefore, necessary to add an emphatic note of caution in this regard. More often it is common that some of the partners of a firm may not even by knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who may be admitted for the benefit of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all*

> *partners and ask them to prove under the proviso to sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that requisite condition mentioned in sub-section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was during the relevant time in charge of the business.*

11. In the instant case, the records reveal that the Applicant is a partner of Madhav Builders since 2012. The FIR prima facie reveals, that the applicant had informed the Complainant that the construction was in full swing and that the other partner Abhay Bhandari was busy in obtaining relevant sanctions. Such false representation was made though it was within the knowledge of the Applicant that LOI was not issued and sanctions were not obtained and construction had not even commenced. When the complainant threatened to lodge a complaint, the applicant along with others signed a memorandum of understanding and agreed to refund the money, which prima facie indicates that he was taking part in the business of the partnership firm.

12. The money was not refunded and the complainant was instructed not to deposit the cheque and instead he was deceived into entering into an agreement for sale of flat in V.M. heights under a pretext that Abhay Bhandari had invested money in a flat in the said project, which was to be transferred in the name of the daughter of the complainant. The records reveal that the flat allegedly transferred in the name of the daughter of the complainant is in possession of a third person and the owner has issued notice to the complainant for cancellation of the agreement for non-payment of consideration.

13. The statement of the proprietor of V.M. Heights also prima facie indicates that Abhay Bhandari is an estate agent. One Jasbir Singh had booked a flat in V.M. Heights through Abhay Bhandari on payment of Rs.7,00,000/-. Abhay Bhandari had instructed him to transfer the said flat in the name of the complainant and to adjust the money paid by Jasbir Singh towards the said flat. He has stated that Abhay Bhandari has not paid any amount towards the said flat. The records, thus, indicate that the Complainant was deceived in entering into agreement in respect of a flat, which was already in possession of a third person.

14. It is also to be noted that similar crimes are registered against the Applicants. Perusal of the FIR lodged by other purchasers of a different

project. The *modus operandi* appears to be to lure innocent purchasers in search of residential premises, in investing their hard earned money/ retirement benefits etc. in projects and deceive them in believing that the construction is in full swing, despite knowing that there is no LOI or approvals for such projects. Thus, prima facie there is material to show the involvement of the Applicants in the crime. No case is made out for grant of anticipatory bail. Hence, the applications are dismissed.

15. At this stage, learned Counsel for the Applicants seeks extension of interim relief as to approach the higher Court for seeking appropriate relief. Since the Applicants are on interim bail, the same is extended by four weeks.

(ANUJA PRABHUDESSAI, J.)