

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

ANTICIPATORY BAIL APPLICATION NO. 641 OF 2020

Sachin Navinchandra Dholakia ..Applicant

v/s.

The State of Maharashtra . ..Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 643 OF 2020**

Rajvilas Dhundiraj Gadkari ..Applicant

v/s.

The State of Maharashtra . ..Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 668 OF 2020**

Jitendra Mangilalji Jain ..Applicant

v/s.

The State of Maharashtra . ..Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 682 OF 2020**

Kalpesh Bharat Thakkar ..Applicant

v/s.

The State of Maharashtra . ..Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 688 OF 2020**

Kishor Raichand Shah ..Applicant

v/s.

The State of Maharashtra . ..Respondent

Mr. Aabad Ponda, Sr. Advocate i/b. Karan Jain for the Applicant in ABA/641/2020.

Mr. Aabad Ponda, Sr. Advocate i/b. Ashish Raghuvanshi for the Applicant in ABA/643/2020.

Mr. Amit Munde for the Applicant in ABA/668/2020.

Mr. Amin Solkar a/w. Misbaah Solkar in ABA/682/2020.

Mr. Chetan Mali for the Applicant in ABA/ 688/2020.

Mrs. Sharmila Kaushik, APP for the State.

Mr. A.V.Shiroli (I.O.), API Chembur Police Station present.

CORAM : ANUJA PRABHUDESSAI,J.
DATED : 1st 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.17 of 2019 registered with Chembur Police Station, Mumbai, for offences under Section 306, 384, 342, 506(2), 504, r/w. 324 of IPC.

2. The aforesaid crime was registered pursuant to the First Information Report lodged by Kshitij Agarwal, son of the deceased-Sanjay Agarwal. The FIR reveals that the deceased had taken redevelopment project of Abhilash Co-operative Housing Society, Plot No. 428/429, 10th Road, Near Jain temple, Chembur. The Applicants herein had entered into agreements with the deceased for purchase of flats in the said project of Abhilash CHS. As per the said agreement, the deceased was to hand over possession of the flats on 31.12.2011. The

deceased failed to hand over the possession of the flats on the scheduled date. The Complainant has alleged that the Applicants obstructed development process and pressurized the deceased to hand over the possession of the flats. The first informant has alleged that these Applicants also abused and threatened the deceased and demanded exorbitant amount from the deceased. The Applicants are accused of having incited and provoked said Sanjay Agarwal to commit suicide, on 3.1.2019.

3. Mr. Ponda, learned Sr. Counsel for the Applicants submits that the Applicants are the purchasers who have paid substantial amount towards sale consideration. He submits that the possession of the flats was to be handed over on 31.12.2011, but till 2018 they were not put in possession of the premises. The building was not constructed as per the sanctioned plans, and there were several illegalities. He submits that as per Clause 11 of the agreements, the purchasers were entitled for compensation and demanding such compensation / lawful dues does not constitute an offence of extortion, and asking for possession of the premises would not amount to 'abetment' within the meaning of Section 107 of IPC. He further states that the first information report itself indicates that the deceased was in confused state of mind, and that he had committed suicide in the disturbed state of mind, and ultimately committed suicide on 3.1.2019. He submits that the ingredients of offence under Section

306 are not made out. Learned Counsel for the Applicants state that the Applicants have reported to the Investigating Officer. They have been thoroughly interrogated and that their presence is not required for custodial interrogation.

4. Learned APP states that the deceased had tried his best to complete the project within the stipulated time, but the project was delayed due to change in BMC Rules. She further states that the deceased was paying rent to the Applicants, despite which the Applicants abused and threatened the deceased. They did not allow demolition of flower beds, which was necessitated in view of change in BMC Rules. She further contends that instead of resorting to civil remedy, the Applicants pressurized the deceased by making exorbitant demands for delayed possession. She claims that the CCTV footage shows that the Applicants had meeting with the deceased, and the Applicants, particularly Applicant Jitendra Jain was aggressive in the said meeting. She submits that the Applicants have played an active role to facilitate the commission of suicide.

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

6. As noted above, the deceased had undertaken redevelopment

project of Abhilash Co-operative Housing Society and the Applicants herein had entered into agreements with the deceased for purchase of the flats in the said project. It is not in dispute that the Applicants had paid substantial amount towards sale consideration. A perusal of the Agreement reveals that the possession of the flats was to be delivered on 31.12.2011, which period could be extended by mutual consent. In terms of Clause 11 of the Agreement, in the event the possession of the flats was not handed over within stipulated time, the purchasers had option to terminate the agreement, and the promoters were liable to refund the amount received with interest of 9% per annum.

7. The records prima facie indicate that the deceased had not completed the construction within the stipulated period. Further, in view of the change in BMC Rules, a decision was also taken to demolish the flower beds and balconies. In view of the delay in completing the project and change of BMC Rules during the interregnum, the Applicants had to settle for flats without balconies and flower beds. It was under these circumstances, that the Applicants started demanding possession of the suit flats and/or refund of money with interest.

8. The FIR prima facie indicates that the deceased was in a disturbed state of mind because of the demand by the Applicants for refund of money and/or for delivering possession without any demolition of

balconies and flower beds. As noted above, the Applicants had paid substantial amount towards the price of their respective flats. They were therefore justified in expecting possession of their flats in time as per the agreement and sanctioned plan or in the alternate to demand refund of money with interest. The fact that they were being paid rent for the delayed period would not make such demand unlawful or illegal and would not constitute extortion or abetment.

9. Though it is stated that the Applicants had threatened and abused the deceased on 22.12.2018 and 5.12.2018, neither the deceased nor the first informant had lodged any complaint regarding such incident. Even otherwise, such conduct cannot *per se* be construed as instigation or abetment.

10. Considering the above facts and circumstances, in my considered view, the material on record does not prima facie establish essential ingredients of abetment within the meaning of Section 107 of IPC. The Applicants were on bail during pendency of the application before the Sessions Court, as well as during the pendency of this Application. The Applicants were directed to report to the Investigating Officer. It is stated that they have duly reported and have been interrogated. Though learned APP disputes these facts, there is nothing on record to indicate that the prosecuting agency had ever brought to the notice of the Court

that the Applicants had not complied with the bail conditions. There is also nothing on record to indicate that the Investigating Officer had called upon the Applicants to attend the Police Station for the purpose of interrogation. Under the circumstances, there is no merit in the contention that the present of the Applicants is required for the purpose of interrogation.

11. Considering the above facts and circumstances, particularly, the nature of accusation, and the material in support thereof, in my considered view, this is not a case which would justify custodial interrogation. The Applicants are permanent residents of Mumbai, and there is no chance of the Applicants absconding and/or thwarting course of justice. In view of above, the Applicants are entitled for pre-arrest bail, hence the Applications are allowed on the following terms and conditions:-

(i) In the event of arrest of the above named Applicants in C.R.No.370 of 2019 registered with Chembur Police Station, Mumbai, the Applicants be released on bail on furnishing P.R. bond of Rs.30,000/- (Rupees Thirty Thousand Only) each with one or two solvent sureties in the like amount, to the satisfaction of the Investigation Officer.

(ii) The Applicants shall report to the Investigating Officer, if required

for the purpose of investigation and interrogation.

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

(iv) The Applicant shall not change their residential address without prior intimation to the Investigation Officer.

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

(ANUJA PRABHUDESSAI, J.)

PRASANNA P
SALGAONKAR Digitally
signed by
PRASANNA P
SALGAONKAR
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