

Diksha Rane

Digitally
signed by
DIKSHA
DINESH
RANE
Date: 2022.11.28
18:58:31
+0530

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

BAIL APPLICATION NO.1604 OF 2021

VISHRAM SHIVRAM SAWANT ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
INTERIM APPLICATION NO.777 OF 2022
IN
BAIL APPLICATION NO.1604 OF 2021**

TARIQUE SHAUKAT CHUNAWALA ..APPLICANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Mr. Shirish Gupte, Senior Advocate i/b. Ms. Supriya Kak for
the applicant.
Ms. P. N. Dabholkar, APP for State.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 28, 2022.

P.C. :

- 1.** Heard Mr. Gupte, learned senior advocate for the applicant.
- 2.** This is an application for bail in respect of the offence punishable under Sections 409, 406, 467, 468, 471, 420 read with 34 read with 120-B of the Indian Penal Code read

with Sections 13 and 14 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 read with Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 vide C.R.No.158 of 2015 registered with Arnala Coastal Police Station.

3. The applicant is a developer. In respect of the project which could not be completed and for which several investors had made investments, midway the applicant took over the project from the erstwhile developers. The applicant agreed that the entire responsibility will be taken over by him and that the investors will be given their flats. However, later the project could not be completed.

4. The First Information Report (FIR) was registered against the applicant. One of the offence which the applicant is chargesheeted is Section 409 of the IPC. The applicant is a developer and therefore, *prima facie*, in my opinion, Section 409 of the IPC will not be applicable. Section 409 of the IPC reads thus :-

"409. Criminal breach of trust by public servant, or by banker, merchant or agent. - Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Prima facie, the applicant is neither a public servant nor a banker, merchant, factor, broker, attorney or agent. He is a developer. Towards the investments made by investors, as a developer he has to hand over the flats to them.

5. It is pointed out that the total dues which are due and payable of the investors is to the extent of Rs.54 crores. The liability of the applicant is to the extent of Rs.11 crores. Three flats of the applicant at Item Nos.42, 43 and 44 approximately worth more than Rs.1,45,00,000/- are under attachment. An amount of Rs.50,00,000/- has already been deposited by the applicant. 11 purchasers have been paid part of the amount.

6. In the list of the attached properties, the value of the property under attachment is submitted by learned APP to be Rs.100 crores. Learned senior advocate, on instructions, submitted that so far as the applicant is concerned, he will not contest the attachment before the Special Court. Statement accepted.

7. Learned APP, on instructions, submitted that pursuant to the attachment order, the notification has been issued and the Special Court is already seized of the matter which obviously will be taken to the logical conclusion.

8. The applicant was arrested as far back as on July 10, 2017 and is in custody for almost 5 years and 4 months. The trial is not likely to commence soon. In this view of the matter, in my opinion, the applicant can be released on bail as the interest of the flat purchasers is adequately secured. Hence the following order.

ORDER

(a) Application is allowed.

(b) Applicant-Vishram Shivram Sawant shall be released on bail in connection with C.R.No.158 of 2015 registered

with Arnala Coastal Police Station, on his furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount.

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(d) The applicant shall report to the Investigating Officer as and when called.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The bail application is disposed of.

(g) The interim application is also disposed of.

(M. S. KARNIK, J.)