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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**BAIL APPLICATION NO.855 OF 2020**  
**AND**  
**BAIL APPLICATION NO.1184 OF 2020**

|                          |   |    |            |
|--------------------------|---|----|------------|
| Rajesh Chhagganlal Patwa | ] | .. | Applicant  |
| vs.                      |   |    |            |
| State of Maharashtra     | ] | .. | Respondent |

Mr.Rishikesh Mundargi a/w Rajesh Singh, Iftekhar Sayed, Paavani Chadha, Shubham Singh for the Applicant in both Applications.

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

PI R.P. Bayer, EOW Thane, Rural present.

**CORAM : BHARATI DANGRE, J**

**DATE : 3RD AUGUST 2022**

**P.C.**

1] By these two applications, the applicant is seeking his release on bail in two distinct CRs being CR No.513/2017 and CR No.523/2017 invoking offences under Section 420, 406 read with 34 of the Indian Penal Code and under Section 3, 8, 13 of the Maharashtra Ownership of Flat Act, 1963. The Applicant came to be arrested on 16.11.2017/ 17.11.2017. In both the CRs, Section 3 of the MPID Act was invoked.

2] The Applicant was shown to be arrested on 16.11.2017 in CR No.513/2017 and his Bail Applications being rejected by the Additional Sessions Judge, he has approached this Court.

3] It can be seen that the Applicant is facing charge under Sections 420, 406, 465, 467, 468, 471 read with 34 of the Indian Penal Code and under Section 3, 8, 13 and 14 of the MOFA Act and under Section 3 of the MPID Act.

4] The learned counsel for the Applicant Mr. Mundargi would submit that the co-accused Manoj Bhanushali is released on bail on 10.01.2019 and one Shantilal Velji Chheda is also released on bail by this Court on 27.09.2018. Further relying upon the order passed in the case of his brother Vinod Patwa who has been released on bail by this Court on 09.01.2020, Mr. Mundargi would submit that there is no reason why the benefit of said order cannot be extended to the Applicant.

5] The learned counsel for the Applicant has further submitted that the project got delayed and the company was unable to complete the same since the requisite permission was obtained by the company from Gram Panchayat, Paye, under misconception, whereas, for carrying out the construction permission of the Collector was necessary.

In any case, according to Mr. Mundargi the Directors of the company were under bonafide impression that the permission of the Gram Panchayat is necessary and under mistaken belief the said permission was taken. Hence, construction did not progress on the basis of said permission and whatever construction was carried out, was never accorded sanction and approved from the competent authority.

The learned counsel submits that Section 420 of the IPC has been invoked, since there is discrepancy in the letter from the Gram Panchayat which permitted the construction and it is alleged that the approval letters are forged.

6] The two distinct complaints came to be lodged by two Investors/ Complainants alleging that they had invested their amount in a project floated by the Company belonging to the Applicant for residential as well as commercial shops, but despite the payment of amount, when the physical possession was not handed over, they approached the Police Station and the complaints came to be lodged. The applicant is alleged to be owner/director of the company who were constructing a project styled as "Mahavir Srushti". The Investigating machinery was set into motion on the complaint filed, where they gave the details of the amount paid by the complainant towards the flat/shop and investigation revealed that there were several other investors who had invested their money into the project, but they were not delivered the physical possession and even the money was not refunded. The subject CR was transferred to EOW, Thane rural considering the enormity of the amount involved. On completion of investigation charge sheet was filed against 7 Directors including the Applicant and his brother Vinod Patwa.

7] Out of the 7 directors who were charged, barring the present Applicant, all other Directors are released on bail. The copies of distinct orders in the case of accused Shantilal Chheda, Manoj Bhanushali, Nanji Bhanushali and Vinod Patwa are placed on record.

8] On perusal of the said orders, I see no reason why parity cannot be applied to the present Applicant as the case of the prosecution has been crystalized in the charge-sheet and though the Applicant is alleged to be one of the Directors, he alongwith his brother Vinod Patwa has submitted an Affidavit-cum-Undertaking before the Court not to dispose of the properties belonging to them and based on this

Undertaking, the co-accused Vinod Patwa has been released on bail on 09.01.2020 by recording as under :

*“The applicant had filed affidavit-cum-undertaking dated 7<sup>th</sup> October, 2019, and, placed on record the facts as well as approximate value of the immovable property owned by M/s. Mahavir Patwa Developers and Constructions Private Limited, and, submitted the valuation estimated report dated 27<sup>th</sup> September, 2019. It is submitted that the applicant has filed additional affidavit dated 26<sup>th</sup> December, 2019, executed before the Jailer. In the additional affidavit, it is stated that the valuation report submitted by the applicant be considered for the purpose of estimated valuation of the property. It is submitted that as stated in the chart annexed to the affidavit-cum-undertaking dated 7<sup>th</sup> October, 2019, with regards to the transactions between the applicant and M/s. Mahavir Patwa Developers and Constructions Private Limited, the total amount payable to Shri Mahavir Patwa was Rs.18,59,600/-. The account has been freezed. The properties are attached. In the aforesaid affidavit/undertaking the applicant and his brother gives undertaking that without permission of court they shall not deal with any movable and immovable properties of company until disposal of trial. The applicant undertakes to abide by the affidavit-cum-undertaking. The said affidavit-cum-undertaking dated 7<sup>th</sup> October, 2019 was jointly executed by the applicant and Rajesh Patwa. It is submitted that the respondents has seized all the movable and immovable properties of the Directors as well as the company. In the panchanama and remand application, the respondents have shown the total land owned and occupied by the company as 60.30 acres. However, for purpose of valuation of the seized property, the respondents have considered only 46.6 acres land as they have seized the title documents of the said land. According to respondents, the approximate valuation of the said 46.6 acres land at the rate of Rs.6 lakhs per acre comes to around Rs.111,19,00,000/- only. The Respondents have thereafter also recovered the title documents of 39 gunthas land and according to them the valuation of the said land is Rs.2,34,00,000/-. It is submitted that the respondents have seized the bank accounts of the applicant and other accused having balance of Rs.2,75,802/-. According to prosecution the total valuation of the seized property is Rs.114,35,75,802/-. The immovable and movable*

*properties of the accused are seized by the investigating agency. The valuer had considered the area admeasuring 1,58,100.00 square meters equivalent to 39.775 acres and construction area thereon and finally concluded the estimated costs of land and construction to sum of Rs.179.51 crore. It is submitted that the valuer had not only considered lesser land for the purpose of valuation but also considered minimum valuation of the land as well as construction thereon. The valuation of the land would have been more".*

9] Even it was observed that total valuation of the property would be around Rs.158,44,00,000/- lakhs and if at the same rate, the area of 60.6 acres is calculated, the total valuation would be more than Rs.205,02,00,000/- and if the costs of construction area is computed, it would come to Rs.249,30,00,000/-, which is more than the amount required to be secured for the bonafide purchasers.

10] The above observation is equally applicable to the Applicant as an Undertaking has been submitted on 07.10.2019 by the two brothers that they would not deal with any movable or immovable property of the Company until decision of the trial.

11] Moreover, as stated above, the case of the Applicant is that the Gram Panchayat was not the competent authority to grant permission and therefore forgery in the approval letter of the Gram Panchayat is of no consequence at all, as the Applicant did not reap any benefit out of the said communication. From the photographs placed on record by the learned APP, it can be seen that the project is in shamble and though buildings are constructed, they cannot be occupied since no permissions are granted by the competent authority.

12] Considering the fact that invoking of offences under Section 467

appears to be doubtful, the Applicant in incarcerate since the date of his arrest i.e. 16.11.2017/17.11.2017 that is for least five years and maximum punishment prescribed under MPID Act being six years, the Applicant deserves to be released on bail.

13] It is made clear that the observations made above are restricted for determination of the application and the trial Court in any way shall not be influenced by the said observations, limited and restricted for this purpose.

Hence, the following order :

(a) Application is allowed.

(b) Applicant – Rajesh Chhagganlal Patwa shall be released on bail in connection with CR No.513/2017 registered with Economic Offence Wing (Thane Rural), District Thane, and CR No.523/2017 registered with Ghatkopar Police Station, on furnishing P.R. bond to the extent of Rs.25,000/- each with one or two sureties of the like amount.

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

(d) The Applicant shall regularly attend trial, on every date, unless he is exempted.

**[BHARATI DANGRE, J]**