

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

ANTICIPATORY BAIL APPLICATION NO.818 OF 2022

Ketan Tokershi Shah

...Applicant

Versus

The State of Maharashtra

...Respondent

....

Mr. Ganesh Gole i/b. Dr. S.S. Karmarkar and Mr. P.P. Patil i/b. M/s.
Karmarkar and Associates for the Applicant.

Ms S.S. Kaushik, APP for Respondent-State.

Mr. Kiran Shaligram, PI, E.O.W., present

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 28th APRIL, 2022.

P.C.:-

1. This is an application under Section 438 of Cr.P.C. for pre-arrest bail in C.R. No.545 of 2018 registered with Amboli police station, Mumbai and re-registered as C.R. No.118 of 2018 for offences punishable under Sections 406, 409, 420 and 120-B of the IPC and Sections 3,5,7,8 and 13 of the Maharashtra Ownership of Flats Act, 1963(MOFA) registered with E.O.W.,Unit No.1, Mumbai.

2. Heard Mr. Gole, learned counsel for the Applicant and Ms S.S. Kaushik, learned APP for Respondent-State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR dated 22/12/2018 lodged by Mr. Avadh Shah. It is the case of the Complainant that he was desirous of purchasing residential premises. One estate agent referred him to M/s. Monarch and Qureshi Builders. The Complainant met the Applicant and other partners of M/s. Monarch and Qureshi Builders. The Complainant was informed that three wings of 26 floors were to be constructed. An initial deposit of Rs.5,00,000/- was taken from him and allotment letter was issued with an assurance that possession of the flat would be given in October-2011. The Complainant paid total amount of Rs.73,39,087/- towards sale consideration. The Applicant and the other partner did not complete the construction and did not refund the money. The Complainant also learnt that some other purchasers were also cheated and hence he lodged the FIR against the Applicant and the other partners for cheating the purchasers to total amount of Rs.9,47,11,532/-.

4. Learned counsel for the Applicant states that as on the date the Applicant has constructed 22 floors in each of the wing and that the partnership firm has been permitted to construct 28 floors.

5. Mr. Gole, learned counsel for the Applicant states that the

partnership firm is permitted to construct 28 floors and that 22 floors have already been constructed. He submits that the firm has applied for completion certificate and that CC is not yet issued for want of payment of penalty and other charges. Learned APP has also placed on record copy of the letter issued by SRA, which indicates that the Applicant is permitted to construct 28 floors however, CC is not issued for want of payment of charges.

6. The Applicant and Jayesh Shah, partners of the Partnership Firm have already paid Rs.2,56,87,707/-. Learned counsel for the Applicant has placed on record affidavit of the Applicant and the other partner Jayesh Shah wherein they have undertaken to pay 25% of Rs.9,83,61,816/- being the penalty/ charges, within 15 days from the receipt of demand letter from SRA and that the balance amount would be paid within six months in installments as per the SRA rules.

7. Learned counsel for the Applicant states that the registration is valid from 19/08/2017 till 30/12/2022. The Applicant as well as the other partner has assured to complete the project on or before 30/12/2023, as per the undertaking tendered before RERA. The statement is accepted as an undertaking to the Court.

8. In the light of the said statement, application is allowed on the following terms and conditions:-

- (i) In the event of arrest of the Applicant in C.R. No.545 of 2018 registered with Amboli police station and re-registered as C.R. No.118 of 2018, he shall be released on bail on executing PR bonds in the sum of Rs.25,000/- with one or two sureties to the like amount;
- (ii) The Applicant shall report to the Investigating Officer as and when required for the purpose of investigation;
- (iii) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.
- (iv) the Applicant shall comply with the undertaking given by him in the affidavit and the statement made before the Court. Failure to comply with the said undertaking will result in cancellation of bail without further reference to this Court.

9. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)