

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1437 OF 2022

Mahendra Mohanlal Kothari .. Applicant

Versus

The State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO.1623 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.1437 OF 2022

Chandra Prakash Shukla .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr.Aabad Ponda, Senior Advocate i/b Mr.Raju D. Suryawanshi
for the Applicant.

Ms.Anamika Malhotra, A.P.P. for the State/Respondent.

Mr.S.N.Raj i/b Mr.Vishal Khetre for the Respondent No.2.

Mr.Ganesh Kekan, API attached to Navghar Police Station,
present.

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CORAM: BHARATI DANGRE, J.
DATED : 06th JULY, 2022

P.C:-

1. The applicant is apprehending his arrest in C.R.No.89 of 2019 registered with Navghar Police Station for the offences punishable under Sections 420, 406, 120-B read with Section 34 of the I.P.C. as well as Sections 3 and 4 of the Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 and MahaRERA Act.

2. The complainant is one Chandraprakash Shukla, who was working as a Manager in O.N.G.C. and on his retirement, he indulged himself in Share Market. One M/s.P.K. Construction is a Proprietorship Firm belonging to one Baburaj Panicker. He started a partnership company in the name of 'M/s.Chaitanya Builders & Developers' with two other partners, namely, Gaurav Panicker and Nihant Panicker. Thereafter, an agreement was entered into with M/s.S.I. Construction in the year 2008 for the purpose of construction and development of 'Chaitanya Heights Building', situated in Survey No.321, New Survey No.36, admeasuring 910 square meters.

3. The complainant received information through the Estate Agent Mr.Ramesh Poojary that 6 flats are available for sale in the said under construction building. He expressed his desire to invest in it and it was informed him that the building would be 9 storied and the necessary permissions would be obtained. It was also assured that on his paying consideration for 6 flats, the remaining floors would be constructed and the building would be ready.

Since, the proposal was beneficial to him, he accepted the same, and agreed to pay consideration of Rs.1,90,68,000/- towards six flats.

Out of this, Rs.60,00,000/- was to be paid in 7 days and the remaining amount was to be paid after execution of the Memorandum of Understanding (M.O.U.). Accordingly, he paid a sum of Rs. 11,00,000/- in cash in the office of the Builder and a receipt was passed over to him. The receipt bears the signatures of the two partners as well as the Agent. Thereafter, he parted with distinct sums through cheques and this amount is stated in the complaint to be Rs.49,00,000/-. Further, Rs.5,00,000/- was paid in cash on 22/05/2018. Even a sum of Rs.10,00,000/- was also transferred through bank transaction.

4. The complainant has alleged that he has parted with sum of Rs.80,00,000/- till date, and even the allotment letter was issued to him. It was revealed upon him that the Builder has already sold 7 flats to one Rameshchandra Dixit for consideration of Rs.50,64,000/-. He realized that he was cheated as an M.O.U. was entered with him on 01/04/2014, where an assurance was given that the construction would be completed within 6 months, but noticing that there is a failure and one flat is sold to some other person, he sought to exit from the project by referring to the M.O.U., by which it was assured that the complainant either will be put in possession of 5.6 flats or he can seek return of Rs.2,99,43,333/-.

5. The above allegations are levelled as against the partners of M/s.Chaitanya Builders & Developers.

As far as the present applicant is concerned, he comes into picture when the complainant alleged that on 13/11/2018, when he went for inspection of the building, he noticed a Board of Chaitanya Heights Building with the name and contact number of Mr.Mahendra Kothari (present applicant). Thereafter, the complainant realised that he has been duped and got apprehensive that he will lose the amount of Rs.2,99,43,333/-. It is alleged that though the Builder has

received Rs.80,00,000/- by way of part consideration, Sale Agreement was not registered and there is breach of the provisions of the MOFA as well as MahaRERA Act.

6. Heard learned senior counsel Mr.Ponda for the applicant, learned A.P.P Ms.Malhotra for the State and learned counsel Mr.Raj for the complainant.

7. The complainant has filed his affidavit in response to the application and alongwith the same, he has placed on record a written statement filed by the present applicant in response to the Special Civil Suit No.1090 of 2018 instituted by the complainant, seeking injunction against the defendants, including the present applicant.

8. The learned senior counsel Mr.Ponda would invite my attention to an Award, which has also been annexed with the affidavit, where on initiation of arbitration proceedings before the Arbitrator, an Award was passed on 05/09/2017 in favour of the claimant/complainant and the respondents i.e. M/s.Chaitanya Builders & Developers and it's partners are held jointly and severally liable to pay an amount of Rs.80,00,000/- to the claimant. Further, they are also directed to pay jointly and severally a sum of Rs.1,36,20,000/- to the claimant towards profit margin.

9. The Award came to be passed in the backdrop of the claim put up before the Arbitrator by the claimant to the effect that on account of delay in completion of the project, the respondents have offered to refund the amount received from the claimant with profit margin. Though the respondents agreed to refund the amount, they failed.

The Arbitrator has specifically recorded that the claimant decided to exit from the said project and issued the legal notice to that effect on 16/01/2017 and demanded refund of Rs.80,00,000/- alongwith profit margin to the tune of Rs.1,36,20,000/- for a period commencing from 04/01/2014 till 04/01/2017 from the respondents, aggregating to Rs.2,16,20,000/-. The claim was granted and the Award came to be passed.

The Award also directed that on failure to pay to the claimant the amount mentioned in clause (b) and/or (c) within a period of six months from the date of the Award, the respondents shall convey the land alongwith the building structure standing thereon in favour of the claimant in lieu of the Award amount.

10. Reading the complaint as it is, it can be seen that the accusation faced by the present applicant is on the basis, that

his name was reflected on the Board of 'Chaitanya Heights Building'.

When specifically asked, about the connect of the applicant with the project, the learned senior counsel, on instructions, state that the applicant has no concern with the subject land in respect of which the Award has been passed. He states that his statement to that effect is already recorded by the Investigating Officer.

On being confronted with the specific statement being made in the written statement, responding to the suit filed by the complainant, Mr.Ponda on instructions from Advocate Raju Suryawanshi, who is representing the applicant in the Special Civil Suit, states that he will seek permission to withdraw his written statement, by making an appropriate application before the concerned Court.

When specifically asked about the connection of the applicant with the project or for that matter with M/s. Chaitanya Builders & Developers, the learned A.P.P. states that there is no document to show that the said land or the project has been transferred, in any manner, to the present applicant. She states that the statement of the applicant, recorded by the Investigating Officer, is also on the same lines, where he has

stated that he has no connection with the project in which the complainant has invested and allegedly duped by the partners of M/s.Chaitanya Builders & Developers and with whom he is already fighting a battle in the Civil Court and before the Arbitrator in the second round.

In any case, the apprehension expressed by the complainant at this stage is totally unfounded and so is the attempt on part of the Investigating Officer to arraign the present applicant as an accused, without investigating his connect with M/s.Chaitanya Builders & Developers. In the wake of the above, since the applicant has already recorded his statement with the Investigating Officer, he deserve protection from arrest. Hence, the following order.

: ORDER :

- (a) Application is allowed.
- (b) In the event of arrest in connection with C.R.No.89 of 2019 registered with Navghar Police Station, applicant-Mahendra Mohanlal Kothari shall be released on bail on furnishing P.R. bond to the extent of Rs.50,000/- with one or more sureties of the like amount.

(c) The applicant shall report to the concerned police station on 11th & 12th July, 2022 between 3.00 p.m. to 5.00 p.m. and, thereafter, as and when called for.

(d) 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.

11. In view of the disposal of the application, interim application does not survive and stands disposed off.

(SMT. BHARATI DANGRE, J.)