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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO.2745 OF 2021**

Mr. Shah Alam Chaudhary .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr. Kuldeep Patil i/b. Ms Saili Dhuru for the Applicant.
Mrs. Anamika Malhotra, APP for the State.
Mr. N.M. Nadar for the Informant.

CORAM: BHARATI DANGRE, J.

DATED : 22nd JULY, 2022

P.C:-

1. On 11.07.2022, the Investigating Officer filed an affidavit in response to the order dated 06.07.2022, in connection with the bail application of the applicant, where he seeks his release on being charge-sheeted for the offence punishable under Sections 420, 467, 468, 471, 504, 506 read with 34 of the Indian Penal Code and Sections 3 & 4 of the MPID Act as well as Section 3, 4 & 13 of the MOFA Act.

2. The affidavit reveal that in the charge-sheet, there is a reference to 23 investors, out of whom 18 investors have filed their affidavits before the Sessions Court, Palghar, wherein they have accepted that they are ready to take the settlement/offer from the applicant and some of them had their grievances already redressed.

Only 5 investors did not file any affidavit.

3. One Bhushan Bandiwadekar, whose statement came to be

recorded by the Investigating Officer, is to the effect that if he is handed over an amount of Rs.1,72,000/-, he make a statement that his grievance is also settled. Another person Alkesh Harishchandra Sankhe has also reported to the Investigating Officer and stated to the effect that he had handed over a sum of 3,50,000/- to the applicant towards one room and commercial gala but he has not received the amount.

4. On the last date of hearing, the applicant was asked to file a specific affidavit giving certain commitments, since those persons who were put in possession of the room/premises were apprehending since the agreements were not executed with them.

The applicant who is presently housed in Taloja Central prison, has affirmed an affidavit before the Prison Officer, Taloja Central Jail on 22.06.2022 and the said affidavit is placed before me. The same is taken on record.

5. In the affidavit, Para Nos.2 and 3 state as under:-

2. I state that as per the Chargesheet, there are 22 number of witnesses who are allegedly defrauded by the accused persons. I further state that as of today, I have reached settlement with 18 witnesses/victims out of 21 witnesses named in the Chargesheet wherein some of the witnesses have accepted/ready to accept the refund of amount while some others have accepted/ready to accept the property (galas) as per the agreement.

3. An affidavit dtd.13th June 2022 by my brother namely Mr.Junaid Alam Chaudhary wherein the list of the witnesses with whom the settlement has been effected upon alongwith their affidavits is already filed before this Hon'ble Court. The same was verified by the Investigating Officer and accordingly, he has filed an affidavit dtd. 8th July 2022 in the Hon'ble Bombay High Court.

6. In Para No.4, the applicant make a specific statement to the following effect:-

"I further states that I am aware about the terms on which the investors/purchasers have settled the matter and have filed their affidavit to that effect. I further state that I undertake to fulfill each and every assurance given to the investor/purchaser upon which they have agreed for the settlement as per the stipulated time mentioned in their respective affidavits, once I am released from the jail."

7. As regards the execution of the registered agreement in favour of the purchasers who are mentioned in Para No.6, the applicant undertake that within three months from the date of his release from jail, he shall register the agreement subject to the purchasers bearing the registration fee and stamp duty. The details of the persons who have to receive certain amount or possession are enlisted in the affidavit with the specific commitment made qua each of the investor, with the time frame within which the compliance shall be adhered. In the said affidavit, the applicant make a specific statement in Para No.9, which reads thus:-

"I further state that the outstanding amounts mentioned in the above chart shall be paid by me within the stipulated time as specified in their respective affidavits. I further undertake to handover the possession of the room/tenement/Gaala mentioned in the above chart within the stipulated time specified in their respective affidavits and I shall execute a registered agreement in respect of those who are given the possession within 3 months from the date on which the possession is given to them provided all the registration fees and stamp duty are borne by the respective purchasers."

8. In the wake aforesaid affidavit and since it is seen that the applicant has made every attempt to return back the investment or provide the gala/property as promised, within the timeline as set out in the affidavit, the applicant deserve his release on bail, particularly

when, he faces accusations under Section 3 and 4 of the MPID Act. Ultimately no fruitful purpose will be served in keeping the applicant incarcerated, if the interest of the investors is protected.

9. The Investigating Officer in his earlier affidavit has not denied the settlement with the investors and since the investors themselves have filed their affidavits that they have no grievance against the applicant, since they have either paid them the amount and delivered the respective gala or premises, though the entire promise has not been fulfilled, but they are ready to put an end, to the discord on an assurance that the applicant shall fulfill the said promise within the period stipulated, which he has undertaken in the affidavit placed before me. The applicant deserves his liberty in above circumstances.

10. Hence, the following order.

ORDER

(a) Application is allowed.

(b) Applicant - Shah Alam Chaudhary shall be released on bail in connection with C.R.No.285 of 2018 registered at Boisar Police Station on furnishing P.R. bond to the extent of Rs.50,000/- with one or two sureties of the like amount.

(c) The applicant shall strictly adhere by the undertaking given by him in his affidavit dated 22.06.2022 within the timeline which stipulated by him as against each investors.

(d) The affidavit being accepted as an undertaking to this Court, any breach thereof, will entail the complainant or the prosecution will be at liberty to move the application for cancellation of bail.

(e) 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. The Applicant should not tamper with evidence.

(f) The Applicant shall make himself available as and when

required by the Investigating Officer.

(SMT. BHARATI DANGRE, J.)