

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.788 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO.1403 OF 2017

Himanshu Kanji Ashar & Ors. .. Applicants

Versus

The State of Maharashtra & Ors. .. Respondents

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Mr.Anand Varadkar i/b Mr.Kiran Varma for the Applicant.

Ms.A.A.Takalkar, A.P.P. for the State/Respondent.

PSI Shri D.M.Waghmare attached to Mahatma Phule Chowk Police Station, Kalyan, Thane, present.

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CORAM: BHARATI DANGRE, J.

DATED : 21st JUNE, 2022

P.C:-

1. By the present application, the applicants who are the original complainants/investors, seek withdrawal of the amount deposited by the three accused persons as a pre-condition to their release on bail, anticipating their arrest in crime No.I-226 of 2017.

2. Heard the learned counsel for the applicants and the learned A.P.P.

The respondents (original accused), though served, are not represented today. However, all the three accused persons have placed on record additional affidavit-cum-no-objection under their signature/thumb impression, according their no-objection for withdrawal of the amount deposited by them in the Court.

3. By order dated 16/01/2018, this Court noted the undertaking as contained in the affidavit filed by applicant No.1-Mohan B. Rathod and the assurance on his behalf that he shall execute a sale deed with other customers within one month from the date of execution of the undertaking. In para 5, the Court recorded that applicant No.1-Mohan Rathod is ready to settle the matter with all the gullible plot/flat purchasers.

4. As far as applicant No.1 is concerned, since he failed to abide by the undertaking, his application came to be rejected. However, as far as applicant Nos.2 and 3 are concerned, since they expressed their readiness and willingness to deposit 50% of Rs.1.02 crores i.e. Rs.51 lakhs in the Registry, they were admitted to protection from their arrest.

5. The applicants (investors) seek withdrawal of the amount, which is lying in this Court. Now all the three accused persons have accorded their no-objection for permitting withdrawal of 50% of the amount deposited in this Court by the

applicants, I see no hesitancy in granting the said relief. It has, however, come to my notice that alongwith the affidavit filed by the original applicants in response to the application seeking withdrawal of the amount, list of twenty four claimants is annexed. It is clear from the list that an amount of Rs.46,13,213/- is a share of the twenty four applicants in the amount of Rs.51,00,000/- deposited and the contention is that they have been duped to the extent of Rs.92,26,427/-

6. Since Rs.51,00,000/- deposited in this Court was against the interest of twenty seven investors, though the application is filed by only twenty four investors, liberty is granted to the other three investors, who are not party to the application, to prefer a similar application for withdrawal of their share, which is deposited by the original applicants pursuant to the undertaking given by them.

The Investigating Officer shall intimate the other three investors about the withdrawal of sum by the twenty four investors and till then the amount due to them shall lie with the Registry of this Court.

7. The present application is allowed, by permitting the twenty four applicants/investors to withdraw sum of Rs.46,13,213/-. The Registry shall permit the withdrawal of the amount at the instance of Himanshu Kanji Ashar, who shall bring the authorization in respect of all other applicants/investors alongwith photocopy of their Aadhar Card with an undertaking that he shall disburse the said

amount in proportionate to their investment as stated in the chart, which is annexed to the undertaking by the accused.

(SMT. BHARATI DANGRE, J.)