

PMB

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

**INTERIM APPLICATION NO.2872 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.903 OF 2022**

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PRAMOD S. GUPTA AND ORS.

..APPLICANTS

VS.

ANIL VASANT SAWANT AND ANR.

..RESPONDENTS

Mr. R. S. Dubey for applicants.

Mr. Sujit Shelar i/b. Mr. Subhash R. Samukhrao for
respondent no.1.

Mr. H. J. Dedhia, APP for State/respondent no.2.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 5, 2022.

P.C. :

- 1.** Heard learned counsel for the applicants.
- 2.** This is an application for cancellation of anticipatory bail granted by this Court to the respondent No.1 (original applicant)-Anil Vasant Sawant by an order dated 29/06/2022 in Anticipatory Bail Application No. 903 of 2022.
- 3.** By an order dated 04/04/2022, this Court passed the following order :-

". This is an Application under section 438 of Cr.P.C. filed by the aforesaid Applicant apprehending his arrest in C.R.No.846/2021 registered with Kandivali Police Station, Mumbai for offences punishable under sections 406, 420 of the Indian Penal Code.

2. Heard Mr. Sujit Shelar, learned counsel for the Applicant and Ms. S. S. Kaushik, learned APP for the 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 First Information Report (FIR) lodged by one Pramod Gupta. The case of the prosecution is that the Complainant – Pramod Gupta and his brother had booked three flats in building known as "Soni Heights, SRA Scheme, CTS No.819, Dahanukar Wadi, New Link Road, Lalji Pada, Kandivali (W), Mumbai. They had paid 60% of the sale consideration to the Applicant in the year 2010. The Applicant failed to complete the project and told them that the construction work is now handed over to M/s. Brizel Developers LLP. The complainant had alleged that the Applicant has neither given them possession of the flats nor returned the money which is to the tune of Rs.1,10,53,770/-.

4. Mr. Sujit Shelar, learned counsel for the Applicant states that the construction work is still in progress and is likely to be completed in ten months. He states that the Applicant is ready to give possession of the flats in the said project which is likely to complete in ten months or any other alternative premises of the choice of the complainant and his brother or to refund the money with interest @ 10% p.a.

5. In the light of said statement, learned APP to make an endeavour to keep the complainant present on the next date of hearing. Till the next date of hearing, the Applicant is granted interim bail. Hence, the following order :-

(a) In the event of arrest of the Applicant in C.R.No.846/2021 registered with Kandivali Police Station, Mumbai, he shall be released on interim bail till the next date of hearing, on furnishing bail bonds in the sum of Rs.20,000/- with one or two sureties in the like amount;

(b) The Applicant shall report to the Investigating Officer for a period of four days from 12/04/2022 between 11:00 a.m. to 02:00 p.m.

(c) 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.

6. Stand over to **25/04/2022.**"

4. By an order dated 29/06/2022, this Court passed the following order :-

"1. On 4/4/2022, the complainant was noticed and he is present today.

2. My attention is invited to the statement made by the learned counsel for the applicant which was recorded in para-4 of the order.

3. The complainant who is present in the Court through his counsel state that he has chosen the option of taking the flat, since the applicant has made a statement that the project is likely to be completed in 10 months.

4. The learned counsel for the applicant, on instructions, state that the construction work is now handed over to Brizel Developer. Subject to the undertaking that the construction of the project shall be completed within a period of one year from today and possession of three flats should be handed over

to the complainant and he shall also execute the necessary documents/agreements to give legal effect to the transaction between them, the order dated 4/4/2022 is made absolute.

5. It is, however, made clear that in case of any breach of condition on part of the applicant, the prosecution or the complainant are at liberty to move this Court of seeking cancellation of bail.

In view of the disposal of ABA, IA No.1313/22 do not survive and is disposed off."

5. In paragraph 4 of the order dated 29/06/2022, it has been undertaken by the respondent no.1-Anil Vasant Sawant that the construction of the project will be completed within a period of one year and possession of three flats would be handed over to the complainant and he was also to execute the necessary documents/agreements to give legal effect to the transaction between them.

6. The order dated 04/04/2022 passed by this Court was made absolute. In paragraph 5 of the order dated 29/06/2022, this Court clearly stated that in case of any breach of condition on part of the applicant, the prosecution or the complainant are at liberty to move this Court for seeking cancellation of bail. The learned counsel for the

complainant submitted that Mr. Anil Sawant refused to comply with the undertaking. He submitted that he is willing to handover one flat as it is not possible for him to handover remaining two flats as the project has been handed over to some other developer. Learned counsel for the accused-Anil Sawant also submitted that it is not possible for Anil Sawant to handover flats as per the undertaking.

7. In this view of the matter, there is a clear breach of the terms and conditions on which anticipatory bail was granted by this Court vide its order dated 29/06/2021. I am not left with any other alternative but to cancel anticipatory bail which was granted in favour of Anil Sawant. The anticipatory bail stands cancelled. The prosecution to take steps.

8. Interim Application stands disposed of.

(M. S. KARNIK, J.)