

3. By this appeal, the appellant seeks quashing and setting aside of the impugned order dated 25th August 2021, passed by the learned Additional Sessions Judge, Thane, below Exhibit – 1 in Criminal M.A. No.97 of 2021 in MPID Special Case No.14 of 2019, by which, the learned Judge was pleased to reject the appellant's application seeking release of his property attached by the investigating machinery during the course of investigation in C.R.No.I-300 of 2019, registered with the Nayanagar Police Station.

4. Learned Counsel for the appellant submits that the appellant is a bonafide purchaser of a flat, being Flat No.01, Building No.7, Chandresh Acord C.H.S., Mira Road, Dist. Thane (East). He submits that the appellant had no knowledge at the time of purchase of the said flat, about the acts of the accused. He submits that admittedly, no case was registered as against the accused persons from whom the said flat was purchased i.e. when the registered Sale Deed was entered into between the parties and when possession was handed over to the appellant. He submits that it is only post the purchase of

the said flat by the appellant, that an FIR was registered against some persons under the provisions of Indian Penal Code and under the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (MPID Act). He submits that admittedly the appellant is not an accused in the said case i.e. C.R.No.I-300 of 2019, registered with the Nayanagar Police Station. He further submits that it is the police, who have attached the appellant's flat and not the Competent Authority.

5. Learned Counsel for the appellant has today tendered an affidavit-cum-undertaking of the appellant, stating therein that he will not sell, assign, transfer, alienate or create any third party rights in the said property, i.e. flat, without taking the prior permission of the learned Special Judge for MPID at Thane, dealing with Special Case No.14 of 2019 in connection with C.R. No.I-300 of 2019, registered with the Nayanagar Police Station. The said affidavit-cum-undertaking is taken on record.

6. Learned APP does not dispute the fact that it is police who have attached the said property i.e. said flat. She states and that till date, the Competent Authority has not attached the said premises. She also does not dispute the fact that the appellant is not an accused in the said C.R.

7. Perused the papers with the assistance of the learned counsel for the parties. It appears that the appellant gave a Public Notice dated 31st July 2019 with respect to the said premises and purchased a flat vide a registered Sale Deed dated 23rd August 2019. The said registered Sale Deed was entered into between the appellant and Mr. Mohd. Amin Habib Malpara, Mr. Maajid Rahim Saliya and Mr. Munaaf Malang Patel. It appears that possession of the said premises was handed over by the said persons to the appellant on 24th August 2019 and FIR was registered as against the said 3 persons i.e. Mr. Mohd. Amin Habib Malpara, Mr. Maajid Rahim Saliya and Mr. Munaaf Malang Patel on 14th September 2019. The said FIR was registered vide C.R.No.I-300 of 2019, with the Nayanagar Police

Station, Thane Rural, for the alleged offences punishable under Sections 420, 406, 409, 120-B of the Indian Penal Code and under Section 3 of the MPID Act (subsequently transferred to E.O.W). It appears that pursuant to the registration of the FIR, during the course of the investigation, the appellant's flat was attached by the E.O.W, Thane.

8. Admittedly, the property in question has not been attached by the Competent Authority. Admittedly, the appellant is not an accused in the said case. Today, the learned counsel for the appellant has tendered an affidavit-cum-undertaking. Para 4 of the said affidavit-cum-undertaking reads thus:-

“4. I say that I hereby give undertaking to this Hon’ble Court that in the event if the above mentioned property came to be release by this Hon’ble Court then I will not sell, assign, transfer, create lien or create third party rights in the property situated at Flat No.01 building No.7, Chandresh Acord C.H.S., Meera Road, Dist. Thane (East), without taking prior permission of the Ld. Special Court for MPID, at Thane in M.P.I.D. Special Case No. 14 of 2019 in C.R. No.I 300/2019.”

9. Considering the aforesaid and in particular the affidavit-cum-undertaking, we quash and set aside the impugned order dated 25th August 2021, passed by the learned Additional Sessions Judge, Thane, below Exhibit – 1 in Criminal M.A. No.97 of 2021 in MPID Special Case No.14 of 2019, and as such release the property i.e. the said flat attached by the investigating machinery during the course of investigation in C.R.No.I-300 of 2019, registered with the Nayanagar Police Station.

10. We make it clear, that the appellant shall not sell, assign, transfer, alienate or create any third party rights, in the property in question i.e. Flat No.01, Building No.7, Chandresh Acord C.H.S., Mira Road, Dist. Thane (East), without the permission of trial Court. A copy of the affidavit-cum-undertaking tendered today be placed by the appellant on the file of the trial Court, within two weeks, from the date of uploading of this order.

11. Rule is made absolute on the aforesaid terms. Appeal is allowed and is accordingly disposed of.

12. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.