

Santosh

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

BAIL APPLICATION NO. 3861 OF 2021

Naresh Babulal Bhanushali ...Applicant

Versus

The State of Maharashtra ...Respondent

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SUBHASH
KULKARNI

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SANTOSH SUBHASH
KULKARNI
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Ms. Ankita Bamboli, i/b Hulyalkar & Asso., for the Applicant.
Ms. P. N. Dabholkar, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED : 14th July, 2022

ORDER:-

1. The applicant, who has been arraigned in CR No.59 of 2019, registered with Nhava Sheva Police Station, for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.

2. The applicant is a partner of Divya Builders along with his brothers Gitesh Bhanushali and the latter's wife Sneha Bhanushali, the co-accused. The applicant and the co-accused represented to the first informant that they had developed a project "Kanaji Residency" at Plot No.A-54, Sector 16, Ulve. The applicant and the co-accused offered to sale Flat No.402 for a consideration of Rs.36,25,000/-. The first informant paid a

sum of Rs.10,00,000/- to the applicant and the co-accused Gitesh. A home loan of Rs.25,00,000/- was raised from DHFL Finance, Dahisar Branch. Two EMI's of Rs.21,520/- were deducted from the account of the first informant in the month of November and December, 2017. In the month of December, 2017, DHFL Finance informed the first informant that the loan was cancelled as the Flat No.402 was already sold to one Anil Vishwakarma and the encumbrance thereon was still not cleared. Upon inquiry, the first informant realized that the applicant and the co-accused had already sold Flat No.402 to Mr. Anil Vishwakarma in 2014 and the said flat was also again sold to the first informant and thereafter to Mr. Abhishek Pingale. The first informant was made to part with a sum of Rs.11,25,000/- and Abhishek Pingale was made to part with a sum of Rs.11,18,000/-. Thus the first informant lodged the report.

3. The applicant came to be arrested on 28th March, 2021, along with co-accused Gitesh Bhanushali. Sneha Bhanushali, the sister-in-law of the applicant, is stated to be absconded.

4. I have heard Ms. Bamboli, the learned Counsel for the applicant and Ms. Dabholkar, the learned APP for the State, at some length. With the assistance of the learned Counsels, I

have perused the report under Section 173 of the Code and the documents annexed with it.

5. The gravamen of indictment against the applicant and the co-accused is that being the builders and developers they have sold the same flat to multiple purchasers and thereby committed the offence of cheating. Flat No.402 was initially sold to Mr. Anil Vishwakarma in the year 2014. Thereafter, it was sold to the first informant in the year 2017 and it was again sold to Abhishek Pingale in the year 2018.

6. I have perused the copies of the instruments under which the same flat is purportedly conveyed repetitively. The first agreement in favour of Anil Vishwakarma seems to have been executed in the month of November, 2014 by the applicant and one Smt. Minal Bhanushali in the capacity of the partners of M/s. Divya Builders. Mr. Anil Vishwakarma and Shweta Vishwakarma re-conveyed the said flat to Gitesh Bhanushali and Sneha Bhanushali, the co-accused, by executing an Agreement for Sale dated 28th March, 2016 for a consideration of Rs.40,00,000/-. An Agreement for Sale in favour of the first informant Girish Singh and his wife Mrs. Sunita Singh came to be executed on 20th August, 2017 by the co-accused Gitesh Bhanushali and Sneha Bhanushali in respect of the very same

Flat No.402, for the consideration of Rs.28,00,000/-. Again the co-accused Gitesh Bhanushali and Sneha Bhanushali executed an Agreement for Sale in respect of the very same flat in favour of the Abhishek Pingale for the consideration of Rs.34,00,000/-.

7. *Prima facie*, it appears that the applicant Naresh Bhanushali is not the executant of the agreements executed in favour of the first informant Girish Singh and Mr. Abhishek Pingale.

8. The learned APP strenuously submitted that the applicant continued to be a partner of M/s. Divya Developers and had an active role in deceiving Anil Vishwakarma, the first informant and Abhishek Pingale, though he does not appear to be the executant of the Agreements for Sale. It was further submitted that there is material to indicate that consideration was received by the applicant as well.

9. The aforesaid submission of receipt of consideration by the applicant was sought to be contested on behalf of the applicant. An endeavour was made on behalf of the applicant to show that the amount came to be credited to the account of co-accused Gitesh.

10. I am not inclined to delve deep into the question of receipt of consideration from the first informant and Abhishek Pingale.

Evidently, there is material to show that the successive Agreements for Sale were executed in respect of the very same Flat No.402 and unsuspecting purchasers were induced to part with amount, believing false representations. The aspect which the Court is called upon to consider is the nature and extent of complicity of the applicant. *Prima facie*, as indicated above, the applicant is not the executant of the agreements in favour of the first informant and Abhishek Pingale. The applicant had executed the Agreement for Sale in the year 2014 in favour of the Anil Vishwakarma and Shweta Vishwakarma. It seems that subsequently the said purchasers executed an Agreement for Sale in favour of the co-accused Mr. Gitesh Bhanushali and Sneha Bhanushali. Thereafter, the co-accused executed successive Agreements in favour of the first informant and Abhishek Pingale. In the face of these documents, the question as to whether the applicant had also made false representations and induced the successive purchasers to part with the amount warrants consideration.

11. The applicant is in custody since 15 months. The offences are triable by the Magistrate. Investigation is complete for all intent and purpose. There does not seem to be a real prospect of completion of trial within a reasonable time as one of the co-

accused is absconding. In the circumstances, I am persuaded to exercise the discretion in favour of the applicant.

12. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant Naresh Babulal Bhanushali be released on bail, in CR No.59/2019, registered with Nhava-Sheva Police Station, on furnishing a P. R. Bond in the sum of Rs.30,000/-, with one or two sureties in the like amount to the satisfaction to the learned Magistrate.
- (iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- (iv) The applicant shall mark his presence at Nhava-Sheva Police Station on the first Monday of September, January and April, every year, for the period of two years or till the conclusion of the trial, whichever is earlier.
- (v) The applicant shall not leave the limits of Mumbai, Thane and Navi Mumbai without prior

permission of the learned Magistrate, for a period of two years or till conclusion of the trial, whichever is earlier.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

(viii) All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]