

Fakruddin Shabir Kanchwala .. Applicant
Versus
State of Maharashtra .. Respondent
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Mr.Niranjan Mundargi i/b Saurabh B. Rane for the applicant.
Mr.Bharat Mirchandani for the intervenor.
Mrs.Anamika Malhotra, APP for the State.
API Shri Pranay Kate from Nayanagar police station present.

CORAM: BHARATI DANGRE, J.
DATED : 6th JUNE, 2022

P.C:-

1 O 9/2/2022, a statement made on behalf of the applicant came to be recorded to the effect that the existing developer Husain Buxwala has settled the dispute with the flat purchasers mentioned in the FIR and no grievance existed. The learned APP was directed to verify the aforesaid statement and in furtherance of which, the Investigating Officer i.e. the API attached to Nayanagar police station, Mira Bhayender Vasai, filed an affidavit on 10/3/2021, referring to the statement about settlement of the disputes. The Investigating Officer makes a categorical statement to the following effect :-

“I further say that pursuant to the said statement, the Investigating Officer verified the statement dated 26/02/2022 of co-accused Hussain Boxwalla wherein he stated that he repaid entire amount of Rs.18,00,000/- to one flat purchaser namely Ms.Vinesha Pariera. He further stated that he also repaid another flat purchaser Ashish Shukla to the tune of Rs.8,22,000/- out of Rs.26,00,000/-. I crave leave to refer to and rely upon the copy of the statement of co-accused Hussain Boxwalla as and when required by this Hon’ble Court.

I further say that there are in all 8 flat purchasers who made affidavits, out of which the investigating agency has verified 6 flat purchasers who made affidavits and 2 affidavit holders are still to be verified. I further say that the Affidavit holders stated certain conditions in their Affidavits on oath and if the said conditions are not fulfilled, then they have a right to revoke the present Affidavits. Accordingly statements of witnesses who were stated on Affidavit on oath namely (1) Mr.Madhusudan Pillai, (2) Mr.Rajdeo Chauhan, (3) Mr.Umeshchandra Gupta, (4) Mr.Vishwaprasad Rao and (5) Mr.Abhang Berde, were recorded by the investigating agency. I crave leave to refer to and rely upon the copies of those statements only for the perusal of this Hon’ble Court as and when required.

2 My attention has also been invited by the learned counsel for the applicant to an order passed by this court in case of one of the accused Husain Boxwala (Bail Application No.3533/2021) where the applicant was directed to be released on bail by recording as under :-

“The Municipal Corporation Meera Bhayander has directed the applicant to complete the project by

December 2023. The project was delayed beyond the control of the applicant, but now the construction has started. The informant has filed affidavit wherein he has averred that the applicant has given him assurance that he would hand over the possession of flat. The dispute is settled. Therefore, he has no objection for grant of bail to the applicant. The applicant has undertaken to hand over the possession to the informant by December 2023. It appears that the dispute is settled between the parties”.

3 Similarly, in another Bail Application in respect of the very same accused, this Court while releasing him on bail, has recorded that the applicant has already entered into MOU and had assured to complete the project at the earliest. The said assurance was accepted as an undertaking to the Court to the effect that the project shall be completed by 31/12/2023 and till then, the applicant shall not part with the project to third party. The schedule of development/completion of project with the aforesaid deadline was also directed to be submitted to the Investigating Officer which has been accordingly submitted.

4 It is in the backdrop of its aforesaid admitted facts the applicant deserve a protection from arrest since the matter has already been settled with the current developer, Husain Boxwala and the applicant has projected himself to be the erstwhile partner who claimed to have already severed his relationship with the said partnership firm long back ago on 1/6/2018.

An affidavit is also placed on record by two investors i.e. Sunita Amit Agarwal and Amit Ramesh Agarwal and the said affidavit re-iterate assurance given to the investors that the project would be completed within the stipulated timeline and that it shall be registered under the MAHARERA within one month. The said affidavit is taken on record and marked 'X' for identification.

In the wake of the aforesaid facts, the applicant deserve protection from arrest subject to the stipulation that she shall co-operate with the Investigating Officer. Hence, the following order :-

ORDER

- (a) In the event of his arrest, the Applicant – Fakruddin Shabir Kanchwala in connection of C.R.No.346/2021 registered with Nayanagar police station shall be released on bail on furnishing P.R. bond to the extent of Rs.50,000/- with one or two sureties of the like amount.
- (b) 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 and should not tamper with evidence.

(c) The Applicant shall make himself available as and when required by the Investigating Officer.

5 The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)