

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

ANTICIPATORY BAIL APPLICATION NO. 63 OF 2023

1. Mahendrakumar Ghisulal Shah

2. Satish Raghunath Patil

..Applicants

v/s.

The State of Maharashtra .

..Respondents

Ms. Yasmin Tavaria a/w. Abhishek Yadav for the Applicant.

Mr. Satish Agarwal a.w, Ms. Dhara Shaha for the Intervenor.

Mr. Shrikant Yadav, APP for the State.

Mr. Tidke, PSI and Mr. Ghadge API Meghwadi P.Stn. Present.

**CORAM : ANUJA PRABHUDESSAI ,J.
DATED : 16th MARCH, 2023.**

P.C.

1. This is an application under Section 438 Cr.P.C. filed by the aforesaid Applicants apprehending their arrest in C.R.No. 700 of 2022 registered at Meghwadi Police Station, Mumbai for offences under Section 406, 420 r/w. 34 of the Indian Penal Code and Section 13 and 14 of the Maharashtra Ownership Flats (Regulation of the Promotion of Consideration, Sale, Management and Transfer) Act, 1963.

2. Heard learned Counsel for the Applicants, learned APP for the State, and learned Counsel for the Intervenor. I have perused the

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records and considered the submissions advanced by the learned Counsel for the respective parties .

3. The records prima facie reveal that land bearing CTS No. 161 (part), 162(part) and 175 (part) at Indira Nagar, Majas Village, Jogeshwari was notified as slum. The members of Indira Nagar SRA CHS Ltd., entered into an agreement with M/s. Tainwala Builders and Developers to develop the property as per the terms and conditions mentioned therein. It is stated that Tainwala Builders had submitted a proposal to SRA for implementation of slum rehabilitation scheme. The scheme was approved and LOI was issued in favour of M/s. Tainwala Builders and Developers. M/s. Tainwala Builders and Developers entered into Memorandum of Understanding with M/s. Shanti & Santosh Builders. The Applicants are the partners of M/s. Shanti & Santosh Builders. A Joint Development Agreement was executed between the parties. It appears that the LOI holder Tainwala Builders and Developers had executed agreement in favour of Applicant No.1 being a partner of M/s. Shanti & Santosh Builders authorizing him to do all such acts and obtain necessary permission for the SRA development.

4. It is stated that several persons had agreed to purchase flats from the free sale component. The first informant Mohandas S. Shetty is one of the persons who had booked a flat in the said project. He has stated

that he had paid Rs.42,70,000/- towards sale consideration. It is further stated that several other purchasers had also paid money to the Applicants towards sale price of the flats in the said project. Said Mohandas Shetty lodged the FIR alleging that the Applicants herein have not commenced construction and that they have misappropriated the money which was paid to them towards sale consideration of the said flats.

5. Learned Counsel for the Applicants states that the Applicants had already commenced construction. They have constructed three buildings and out of 821 slum dwellers, put 534 slum dwellers in possession of the flats. The records prima facie indicate that the Applicants were unable to proceed with the construction because of the complaints made by some of the slum dwellers. The SRA had issued Stop Work Notice, as a consequence thereof the work had to be stopped. The records also reveal that some of the slum dwellers who were held to be ineligible had refused to vacate the premises, and the Applicants had to initiate proceedings for their eviction. Subsequently, the AGRC had also ordered to revoke the NOC. The said order was challenged before this Court in Writ Petition (L) No.646 of 2020. The said petition was allowed and the matter was remanded. The Apex Grievance Redressal Committee (A.G.R.C.) has once again revoked the NOC by order dated 05.02.2021. The A.G.R.C. has given liberty to Indira Nagar SRA CHS

LTD., to appoint new Developer after holding special general body meeting and has further directed the Engineering Department SRA, to ascertain the expenses legally incurred for the subject SRA Scheme by M/s.Tainwala Builders and Developers and to direct the newly appointed Developer to deposit the said assessed amount of compensation within 45 days of the date of final assessment of compensation by SRA.

6. Learned Counsel for the Applicant states that till date the expenses incurred for the subject project has not been assessed. Learned Counsel for the Applicant further states that the Applicants have already filed a petition which is pending before this Court for directions against the concerned authorities to ascertain the expenses legally incurred for the subject SRA Scheme by M/s. Tainwala Builders and Developers as to enable them to pay the money to the proposed purchasers/investors. The records reveal that the project could not be completed due to some unforeseen circumstances. The records do not prima facie indicate that the Applicants had dishonest intention to cheat the purchasers from the very inception. The mere fact that the Applicants have not been able to complete the construction or that they have breached the contract would not per se constitute an offence of cheating or misappropriation

7. It is also pertinent to note that this Court by Order dated 16.01.2023 (Coram : M.S.Karnik, J.) had granted interim protection to

the Applicants and had directed them to report to the Investigating Officer. Learned APP states that these Applicants have reported to the Investigating Officer, and they have been interrogated. Considering the above facts and circumstances, in my considered view, no case is made out for custodial interrogation. Moreover, the Applicants are the permanent residents of the State and there is no chance of the Applicants absconding and/or thwarting the course of justice. Hence the Application is allowed on the following terms and conditions:-

- (i) In the event of arrest of the Applicants Mahendrakumar Ghisulal Shah and Satish Raghunath Patil in Crime No. 700 of 2022 registered at Meghwadi Police Station, Mumbai, the Applicants be released on bail on furnishing bail bond of Rs.40,000/- (Rupees Forty Thousand Only) each with one or two sureties in the like amount;
- (ii) The Applicants shall report to the Investigating Officer as and when required by the Investigating Officer for the purpose of investigation and interrogation.
- (iii) The Applicants shall keep the Investigating Officer informed of their current address and mobile/contact details, and/or change of residence or mobile/contact details from time to time.

(iv) The Applicants shall not interfere with the Complainant and the other witnesses, or tamper with the evidence in any manner.

(ANUJA PRABHUDESSAI, J.)