

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

ANTICIPATORY BAIL APPLICATION NO. 309 OF 2023

Shri. Akhtar Hasan Rizvi Applicant
v/s.
The State of Maharashtra and anr. Respondents

Mr. Rajiv Chavan, Sr. Advocate a/w. Mr. Mujahid Ansari and
Ms. Priyanka Chavan for the Applicant.
Mr. R.M. Pethe, APP for the State.
Mr. Surel Shah a/w. Mr. Bharat Manghani for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 08th AUGUST, 2023.

P. C. :-

. The Applicant apprehends his arrest in C.R.No.786/2022 registered with Vakola Police Station, Mumbai for offences punishable under sections 409, 420 r/w. 34 of the Indian Penal Code and sections 3, 4, 8 and 13 of Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

2. Heard Mr. Chavan, learned senior counsel for the Applicant, Mr. Pethe, learned APP for the State and Mr. Surel Shah, learned counsel for Respondent No.2/first informant. 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 FIR lodged by Junaid Ibrahim Khan. The facts narrated in the FIR prima facie reveal that the first informant and his brothers had entered into MoU dated 22/04/2013 with Mr. Abis Akhtar Rizvi, Director of M/s. Rizvi Land Developers to purchase 04 commercial premises for sale consideration of Rs.1,40,00,000/- each. The first informant and his brothers had paid 50% of the sale consideration. As per the MoU, the first informant and others had an option to buy back the premises in the event of delay in construction. It is stated that buy back option exercised by the first informant and his brothers was rejected since it was exercised beyond the period of three months as stipulated in the MoU.

4. The records reveal that Abis Rizvi, the son of the Applicant was killed in Istanbul in the year 2017. The first informant and his brothers entered into further negotiation with the Applicant and agreed to purchase 04 residential premises in lieu of the said four commercial premises. There appears to be dispute between the parties over quantum of sale consideration. The first informant claims that in lieu of four commercial premises for Rs.1,40,00,000/- each, he had agreed to purchase residential premises at Rs.1,05,00,000/- each. The price

was reduced from Rs.1,40,00,000/- to Rs.1,05,00,000/- in view of the fact that the premises proposed to be purchased were changed from commercial to residential premises. It is stated that after deducting 50% of the amount which was already paid, they were liable to pay Rs.35,00,000/- per residential flat. Reliance has been placed on letters dated 30/01/2019 and 07/05/2019 whereunder the Applicant had called upon the first informant and his brothers to pay the balance amount of Rs.1,40,00,000/- in respect of the four flats. The Applicant claims that there was a typographical error in the previous two letters wherein the amount was referred to as Rs.1,40,00,000/-. This was brought to the notice of the first informant and his brothers by letter dated 04/06/2021 and they were called upon to pay the balance amount of Rs.70,00,000/- per flat.

5. It is pertinent to note that the first informant and his brothers have already filed commercial suits for recovery of money. It is stated that Complaint filed before RERA is pending adjudication. The question whether the Applicant has breached the oral understanding to sell the residential premises for sale consideration of Rs.1,05,00,000/- or whether the first informant and his brothers had agreed to purchase the flats at Rs.1,40,00,000/- each is a matter for trial. It is further to be

noted that the Applicant has expressed his willingness to deposit Rs.6 Crores, without prejudice to his rights and to show his bonafide. The Applicant has filed an affidavit dated 07/08/2023 wherein it is stated that sum of Rs.3,00,00,000/- (Rupees Three Crores) will be deposited before this Court on 17/08/2023 and the balance amount of Rs.3,00,00,000/- (Rupees Three Crores) shall be deposited on 06/09/2023.

6. Considering the said statement and also considering the fact that the Applicant is on interim bail since February, 2021 and has been interrogated, in my considered view, no case is made out for custodial interrogation and/or to decline pre-arrest bail. Hence, the Application is allowed on the following terms and conditions :-

(a) In the event of arrest of the Applicant in C.R.No.789/2022 registered with Vakola Police Station, Mumbai, he shall be released on bail on furnishing bail bonds in the sum of Rs.25,000/- with one or two sureties in the like amount ;

(b) The Applicant shall report to the Investigating Officer as and when called for ;

(c) The Applicant shall not interfere with the complainant and the other witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(d) 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.

7. The Application stands disposed of.

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(SMT. ANUJA PRABHUDESSAI, J.)