



Diksha Rane

37. BA 383-23.doc

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

BAIL APPLICATION NO.383/2023

GURUNATH SADASHIV PHONDEKAR	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

**WITH
INTERIM APPLICATION NO.1065/2023
IN
BAIL APPLICATION NO.383/2023**

SUNIL KUMAR BATHIJA	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

Adv. Dr. Abhinav Chandrachud a/w. Adv. Saurish Shetye for
the applicant.
Ms. Veera Shinde, APP for the State.
Adv. Datta Mane for the intervener.
Sr. PI Pradeep Warang, PI Daji Gadade, PI Atul Nikam, EOW,
Mumbai.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 3, 2023.

P.C. :

- 1.** Heard learned counsel for the applicant, learned APP for the State and learned counsel for the intervener.
- 2.** This is an application for bail in respect of the offence punishable under Sections 420, 406, 409 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) read with

Section 4, 5, 11, 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereafter 'MOFA Act' for short) registered on 9/4/2025 vide C.R. No.236/2015 with D. N. Nagar Police Station and vide C.R.No.26/2015 with Economic Offences Wing, Unit XI, Mumbai.

3. The FIR was filed on 9/4/2015. The applicant was arrested on 15/11/2016. The applicant was enlarged on bail by learned Magistrate on 14/8/2017 subject to the applicant depositing a sum of Rs.85,90,00,000/-. The bail granted to the applicant was cancelled on 1/10/2021 as the applicant could not honour the commitment made by him. The applicant surrendered on 5/3/2022. The period of applicant's custody also taking into consideration that he was incarcerated for a period of nine months before he was enlarged on bail on the earlier occasion is now 28 months.

4. The applicant is a developer. Some of the complainants are investors and some of them are flat purchasers. It is the submission of learned counsel that the applicant has spent considerable amount of money for realizing the project. The applicant had no intention to cheat

the investors and the flat purchasers. The applicant has incurred expenditure of Rs. 35 crores towards the cost of construction. The applicant had paid Rs.30 crores towards rent and Rs.9 crores for obtaining various permissions. Due to a rival developer with whom the applicant has disputes, the society terminated the contract. The applicant was ready to complete the project otherwise. The applicant had already obtained IOD and C.C. for the project. Learned counsel submitted that a suit for specific performance has been filed against the rival developer. It is further submitted that should the applicant succeed in the said suit, the decretal amount will be enough to cover the refund of the investors and the flat purchasers. Learned counsel for the applicant also placed on record 29 affidavits filed by 50 flat purchasers. According to learned APP, there are 391 flat purchasers who have grievance against the applicant. Learned counsel for the applicant disputed this as according to him, total number of flat purchasers are 299. However, for deciding the bail application, this may not be relevant as this aspect can be gone into by the trial Court.

5. It is the stand of the complainant – Sunil Bhatija as

well as 49 other flat purchasers that no purpose will be served by prolonging the custody of the applicant as the complainant and the other flat purchasers who have filed the affidavit are interested in getting their money back. These 50 flat purchasers who filed the affidavits have no objection if the applicant is enlarged on bail. The applicant had started the development and obtained the necessary permissions. As the contract was terminated by the society, he could not proceed with the development further. *Prima facie*, whether the applicant had an intention to cheat from the beginning will be a subject matter of trial in the facts and circumstances.

6. The maximum punishment for the offence punishable under Section 420 of the IPC is 7 years rigorous imprisonment. So far as the offence under Sections 4, 5, 11, 13 of the MOFA Act are concerned, maximum punishment is 4 years imprisonment. Though Sections 406 and 409 of the IPC are invoked, in the facts and circumstances of the present case, considering the applicant is already in custody for more than two years, the applicant can be enlarged on bail. The applicant will face

the consequences of the trial if he is found guilty of the offences which he is charged. I am informed that even the charge has not been framed and the trial is likely to take long time to conclude. In my opinion, prolonging the custody of the applicant would amount to a pre-trial punishment. Undoubtedly, the flat purchasers have invested their hard earned money in the project. *Prima facie*, in the facts and circumstances of the present case and in view of the affidavits filed on behalf of 50 flat purchasers, I do not think that the custody of the applicant should be prolonged any further.

7. Learned counsel for the applicant, on instructions of Mr. Sushil Shinde, brother-in-law of the applicant makes a statement that should the applicant succeed in the suit of specific performance filed against the rival developer or if any orders on the interlocutory applications are made, the proceeds thereon shall be utilized only and only for benefit of the complainant and the flat purchasers for settling their dues. Statement is accepted as an undertaking to this Court.

8. The investigation is complete. The charge-sheet has

been filed. There are no criminal antecedents reported against the applicant. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Gurunath Sadashiv Phondekar in connection with 236/2015 with D. N. Nagar Police Station and vide C.R.No.26/2015 with Economic Offences Wing, Unit XI, Mumbai, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.
- (c) The applicant shall surrender his passport, if any, to the investigating officer.
- (d) The applicant shall not leave the jurisdiction of Mumbai/Mumbai Suburban District and Thane District without permission of the trial Court.
- (e) The statement made by learned counsel for the applicant on instructions is accepted as an undertaking to this Court. An affidavit to be filed by the applicant in this Court before his released for abiding by the above statement. The jail authorities to permit the applicant to affirm the application.

(f) The applicant shall attend the Investigating Officer of Economic Offences Wing, Unit XI, Mumbai, once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.

(g) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(h) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(i) The applicant shall attend the trial regularly.

9. The application is disposed of.

10. In view of the disposal of the bail application, the interim application is also disposed of.

(M. S. KARNIK, J.)