

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.381 OF 2023

Haresh Prem Sarwan	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Raviraj Paramane for the Applicant.

Ms.P.N. Dabholkar, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 29th March, 2023.

P.C.

1] This is second Bail Application, first being withdrawn on 05.09.2022 when I expressed my disinclination to entertain the same. I had also expedited the trial which was dragging its feet only for the reason that Accused No.1 was absconding.

2] In the *interegnum*, an important development has taken place which has persuaded me to consider the present Bail Application, filed for the second time.

The development being the protection granted in favour of accused No.1 Rahul Chaturvedi by this Court on 23.01.2023 in Anticipatory Bail Application No.205 of 2023.

While granting protection to the co-accused Rahul Chaturvedi (ABA No.205/2023) attention of the Court was invited to the order

passed in earlier Anticipatory Bail Application, where it was recorded that the Applicants are avoiding investigation for last two years. However, in the third Application, the submission of the counsel for the Applicant was accepted that they had no intention to avoid the payment, but some unforeseen financial difficulties resulted in not honouring the commitment. Since entire money was paid to the complainant and flat purchasers, the Court held that custodial interrogation was not necessary.

3] The present applicant was arraigned as accused no.2 in the said CR and face similar accusation which were levelled against the accused Rahul Chaturvedi, who has now repaid entire amount to the complainant and other flat purchasers and this is so recorded by the Court in its order while it protected accused Rahul Chaturvedi.

The learned counsel for the Applicant state that before the Judicial magistrate First Class the complainant has filed an Affidavit on 03.01.2023 where he made a categorical statement as under :

“I say that, during the pendency of said proceedings myself and all other flat purchasers, with the intervention of family members, friends and relatives have decided to amicably settle the dispute between myself and other flat purchasers and Accused persons and accordingly Accused persons i.e. Rahul Ramprasad Chaturvedi and Haresh Prem Sarwan have agreed to return the money deposited by me and other flat purchasers and as such today myself and other flat purchasers have received our respective amount as mentioned in FIR by way of demand draft drawn in the name of each flat purchasers before this Hon’ble Court. I say that, the present affidavit is subject to realization of demand draft drawn in favour of myself and other flat purchasers.”

A copy of the said Affidavit is tendered by the learned counsel and I have perused the same.

4] In the wake of important change in circumstance that there is settlement effected between the complainant and accused persons, I

see no reason as to why the Applicant should be kept incarcerated when the accused No.1 was granted protection from arrest as he has settled the complainant and other flat purchasers by making necessary payment. The learned APP do not dispute the aforesaid statement.

5] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

In the wake of above, the Applicant deserve to be released on bail. Hence, the following order :

ORDER

- (a) Application is allowed.
- (b) Applicant – Haresh Prem Sarwan shall be released on bail in connection with C.R.No.506 of 2019 registered with Narpoli Police Station on furnishing P.R. bond to the extent of Rs.25,000/-, with one or two sureties of the like amount.
- (c) 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.
- (d) The Applicant shall regularly attend trial, on every

date, unless exempted.

(e) Upon release, the Applicant shall furnish his contact numbers and permanent residential addresses to the Investigating Officer and shall keep him updated in case of any change in the same.

[BHARATI DANGRE, J]