

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

**ANTICIPATORY BAIL APPLICATION NO. 524 OF 2022
WITH
INTERIM APPLICATION NO. 812 OF 2022
WITH
INTERIM APPLICATION NO. 758 OF 2022**

Sameer Ganesh Bhube & Ors. ..Applicants

v/s.

The State of Maharashtra . ..Respondents

Mr. A.P.Singh a/w. Mr. Aseem Naphadei/b. A.B.Singh & Co. for the Applicant.
Mr. Ghanshyam Upadhyay for the Intervenor.
Mr. R.M.Pethe, APP for the State.

**CORAM : ANUJA PRABHUDESSAI ,J.
DATED : 8th MARCH, 2023.**

P.C.

1. This application under Section 438 Cr.P.C. is filed by the aforesaid Applicants apprehending their arrest in C.R.No. 78 of 2022 registered at Borivali Police Station for offences under Section 406, 420, 506, 465, 467, 468, 471 r/w. 34 of Indian Penal Code and Section 13 of Maharashtra Ownership of Flats Act.
2. Heard Mr. Singh, learned Counsel for the Applicants and Mr. Pethe, learned APP for the State and Mr. Upadhaye, learned Counsel for the Intervener. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .
3. The Applicants are the Directors of M/s. Navkar Liifespaces Pvt.

Ltd.. The said company had undertaken construction of building “Navkar Atlantis” in Plot bearing No. CTS 2576, 2577 and 2577/1 of Village Eskar. The Complainant Yogesh Sawant had agreed to purchase two flats being flat No. 901A and 1001A proposed to be constructed in the said building. It is stated that the Complainant had paid to the Applicants an amount of Rs.2,80,00,000/- towards sale consideration in respect of these flats. It is alleged that the Complainant Yogesh Sawant had availed loan of Rs.2.50 Crores from ICICI Bank for the purpose of purchase of the said flats. The Applicants did not hand over possession of the said two flats. It is on this basis that the Complainant alleged that the Applicants had cheated him by selling non-existent flats.

4. The records reveal that subsequent to the said agreement, the Applicants and the Complainant herein have entered into Memorandum of Understanding. Clause (3) of the MOU reveals that the Applicants herein were liable to pay to the Complainant an amount of Rs.2,44,05,000/- as per the schedule mentioned in the said MOU. There is no reference to the said MOU in the complaint. It is true that the Applicants had defaulted in making the payment as per the schedule. Nevertheless, the records reveal that the Applicants have paid to the Bank total amount of Rs.2,05,00,000/- as recorded in order dated 22nd December, 2022. The balance amount has been paid to the Complainant. Considering this aspect, learned APP has made a statement that presence of the Applicants is not required for the purpose of

custodial interrogation.

5. Considering the above facts and circumstances, in my considered view, this is not a fit case for custodial interrogation. Moreover, the Applicants are permanent resident of the State and there are no chances of this Applicants absconding 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 in Crime No.78 of 2022 registered at Borivali Police Station, 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, to the satisfaction of the Investigation Officer.
- (ii) Applicants shall report to the Investigating Officer if required by the Investigating Officer for the purpose of investigation and interrogation.
- (iii) Applicants shall provide their permanent as well as temporary address, if any, and their contact details to the Investigating Officer.
- (iv) Applicants shall not change their residential address without prior intimation to the Investigation Officer.
- (v) Applicants shall not interfere with the complainant and the other witnesses in any manner.

(ANUJA PRABHUDESSAI, J.)

