

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

ANTICIPATORY BAIL APPLICATION NO. 922 OF 2023

Hemant Vedprakash Sharma ... Applicant
v/s.
The State of Maharashtra and anr. Respondents

Ms. Sarita Yadav for the Applicant.
Mr. Rajesh Singh a/w. Mr. Ranjan Mishra and
Mr. Ankit Makhija for the Intervenor.
Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 30th MARCH, 2023.

P. C. :-

. This is an Application under section 438 of Cr.PC. filed by the aforesaid Applicant apprehending his arrest in C.R.No.26/2023 registered with Kandivali (W) Police Station, Mumbai for offences punishable under sections 420, 406 r/w. 34 of the Indian Penal Code and sections 3, 5 and 15 of The Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

2. Heard learned counsel for the Applicant, learned APP for the State and learned counsel for the Intervenor. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The records prima facie reveal that Sanket Co-operative Housing Society Limited, Dhanukawadi, Kandivali (W) entered into Development Agreement with Mahek Enterprises to develop plot of land admeasuring 1014.89 sq. meters from Survey No.151, CTS No.121, Dhanukawadi, Kandivali (East), Mumbai. As per the agreement, the Developer was required to give 10 flats admeasuring 230 sq. feet to each of the members in building consisting of ground + 04 floors. It is stated that Mahek Enterprises constructed 04 storey building and handed over the flats to the Society. It is stated that the developer had failed to use full FSI while constructing the flats. It was agreed to construct 04 additional floors. Accordingly, Mahek Enterprises entered into Joint Venture Development Agreement dated 14/05/2010 with Kritika Construction, a proprietorship concern of which the Applicant herein is a proprietor. The Complainant has alleged that in the year 2010, he entered into MoU with Kritika Construction to purchase flat no. 603 on the 6th floor of the building for sale consideration of Rs.66,48,768/-. It was allegedly agreed that the Applicant would allot flat no.103 until such time the construction of flat no.603 was completed. The Complainant has alleged that he has paid an amount of Rs.62,00,000/- to the Applicant and has paid an

amount of Rs.5,00,000/- to the Society towards membership fees. The Complainant has alleged that the Applicant has not commenced the construction beyond 04th floor of the building and that the Applicant has neither refunded the money nor allotted flat no.603 as agreed. On the contrary, the Applicant has sold flat no.103 to the third person. Based on these allegations, the aforesaid crime came to be registered.

4. The records prima facie indicate that the Complainant had entered into MoU dated 14/05/2010 with the Applicant herein for purchase of flat no. 603 on the 6th floor of the building which was proposed to be constructed by the Applicant herein. The 1st MoU dated 06/09/2010 reveals that the sale consideration of the said flat was decided at Rs.66,24,324/- out of which Rs.33,72,324/- was paid in cash and Rs.32,52,000/- was to be paid by cheque. The 2nd MoU dated 23/09/2010 reveals that the Applicant herein had received entire sale consideration of Rs.66,48,768/-. The Applicant is disputing the genuineness of the said MoU. The Complainant had referred the said MoU to the handwriting expert along with admitted signatures of the Applicant and the said report prima facie reveals that the signature on the MoU tallies with the signature on the admitted documents. It is however to be noted that as per the previous MoU dated 06/09/2010,

the Applicant was required to pay Rs.32,52,000/- by cheque. There is no material on record to indicate that the Complainant has paid any amount to the Applicant by cheque or through bank transaction. The records further indicate that the said transaction was of the year 2010 whereas the complaint before the Senior PI was filed on 03/07/2021 i.e., after the delay of 10 years. There is thus inordinate delay in lodging the FIR.

5. The above facts and circumstances do not justify custodial interrogation. Hence, the Application is allowed on the following terms and conditions :-

(a) In the event of arrest of the Applicant in C.R.No.26/2023 registered with Kandivali (W) Police Station, Mumbai, he shall be released on bail on furnishing bail bonds in the sum of Rs.30,000/- with one or two sureties in the like amount ;

(b) The Applicant shall report to the Investigating Officer on 3rd and 4th April, 2023 between 11:00 a.m. to 02:00 p.m.

(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 in any manner ;

(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.

6. The Application stands disposed of.

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by PREETI H
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Date: 2023.04.01
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(SMT. ANUJA PRABHUDESSAI, J.)