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

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ANTICIPATORY BAIL APPLICATION NO.868 OF 2023

Rohit Gulab Tupe & Anr.	... Applicants
V/s.	
The State of Maharashtra & Anr.	... Respondents

**WITH
INTERIM APPLICATION NO.1506 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.868 OF 2023**

Nitin Hanumant Rahujade & Ors.	... Applicants
In the matter between	
Rohit Gulab Tupe & Anr.	... Applicants
V/s.	
The State of Maharashtra & Anr.	... Respondents

Mr. Aniket U. Nikam i/by Mr. Amit Icham, for the
Applicant in ABA.

Mr. , APP for the State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : JULY 18, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.657 of 2022 registered with Lonikalbhor police station, for offences punishable under Sections 406, 420, 120(B) of the Indian Penal Code, 1860 (for short 'IPC'), applicants are seeking relief of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

2. According to prosecution, applicant No.2 is the owner of

Namo Park project land. One Pratik Kalange along with applicant No.1 and accused Rupesh Dhiwar in collusion with each other gained trust of informant and agreed to transfer land admeasuring 1500 sq. fts. with 1010 sq. fts. for construction of house. For consideration of said promise, Pratik accepted Rs.40,83,000/- from the informant. Neither they gave constructed house nor the amount was refunded. According to the informant, the accused persons/applicants utilized the amount for their own benefit resulting into registration of report.

3. Applicants, therefore, applied before learned Sessions Judge under Section 438 of Cr.P.C. which came to be rejected by order dated 27 January 2023. Aggrieved thereby, applicants have filed the present anticipatory bail application.

4. Learned Advocate for the applicant submitted that as per material on record, it was Pratik Kalange, who accepted the amount from investors. As per Memorandum of Understanding (MOU) between applicant No.2 and Pratik Kalange, applicant No.2 being owner of land was paid amount of Rs.1 crore 9 lakh. To show his bona fides, he deposited entire amount in this Court. According to him, Matoshree Developers is a proprietary firm. Based on agreement between the owner and Matoshree Developers, Pratik Kalange being proprietor of Matoshree Developers agreed to develop the property and as a developer accepted amounts from investors. Therefore, applicant No.2 being owner of land is no way connected with the transactions. Applicant No.1 is not a partner with Pratik Kalange as Matoshree Developers is a proprietary firm. However, an advertisement published in

newspaper, it is shown that the said project is jointly developed by the applicant No.1 along with three other persons including Pratik Kalange.

5. The learned Advocate for the victims/investors forcefully objected for grant of any relief in favor of applicants. According to him, applicants in connivance with Pratik Kalange have cheated innocent investors. According to him, applicants along with Pratik Kalange have siphoned of amount collected from investors. According to him, applicant No.2 had received Rs.1 crore 23 lakh and Pratik Kalange transferred huge amount to applicant No.1. Therefore, applicants are not entitled to any relief.

6. On perusal of material on record, *prima facie*, following factual scenario emerges:

- i) Matoshree Developers (proprietary firm) accepted amounts from various investors;
- ii) Applicant No.2 entered with MOU to Matoshree Developers to develop land in question.
- iii) None of the applicants have directly received any amount from investors (as per the investigation at this stage).

7. According to prosecution, at this stage investigation reveals receipt of amount of Rs.1 crore 9 lakh by applicant No.2 being owner of land.

8. Applicant No.2 has deposited Rs.1 crore 9 lakh in this Court to show his bona fides.

9. The factual scenario which prima facie emerges from the investigation, at this stage, indicates that as of today none of the applicants have received any amount directly from the investors nor it is the case of prosecution that applicants promised delivery of possession of constructed building to the investors. *Prima facie*, there is no privity of contract between applicants and investors. The Matoshree Developers is a proprietary firm and therefore, in the absence of material to connect applicant No.1 with Matoshree Developer, except advertisement which shows that the project is jointly developed, as of today there is nothing on record to connect applicant No.1 with the offences alleged.

10. Ultimately, it is for the prosecution to prove offences alleged against applicants during trial.

11. On overall consideration of aforesaid material, custodial interrogation of applicants is not necessary. Hence, following order:

a) In the event of arrest in connection with C.R. No.657 of 2022 registered with Lonikalbhor police station, for offences punishable under Sections 406, 420, 120(B) of IPC, applicants be released on bail on furnishing P.R. bond of Rs.25,000/- each, along with one or two sureties in the like amount.

b) Applicants shall remain present before the concerned police station on 20th, 24th and 27th July, 2023 between 11:00 am to 2:00 pm and thereafter, as and when called by the investigating officer.

c) Applicants shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

d) Applicants shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.

e) Applicants shall, at the time of execution of the bond, furnish their addresses and mobile numbers to the investigating officer, and the Court concerned, and shall not change the residence till the final disposal of the case.

12. The anticipatory bail application stands disposed of in above terms. No costs.

13. In view of disposal of the anticipatory bail application, nothing survives in the interim application and the same stands disposed of accordingly.

(AMIT BORKAR, J.)