

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

ANTICIPATORY BAIL APPLICATION NO. 1448 OF 2022

Rafique Maqbool Qureshi ... Applicant
v/s.
The State of Maharashtra and anr.
Respondents

**WITH
INTERIM APPLICATION NO. 4145 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 1448 OF 2022**

Harshada P. Chandure Intervenor

In the matter between :-
Rafique Maqbool Qureshi ... Applicant
v/s.
The State of Maharashtra Respondent

**WITH
INTERIM APPLICATION NO. 3019 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 1448 OF 2022**

Suhail Ahmed Shaikh Intervenor

In the matter between :-
Rafique Maqbool Qureshi ... Applicant
v/s.
The State of Maharashtra Respondent

**WITH
INTERIM APPLICATION NO. 3018 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 1448 OF 2022**

Mohammed Farooq Khatri Intervenor

In the matter between :-

Rafique Maqbool Qureshi

... Applicant

v/s.

The State of Maharashtra

.... Respondent

**WITH
INTERIM APPLICATION NO. 2674 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 1448 OF 2022**

Parvez Kamruzzama Khan and anr.

....

Intervenors

In the matter between :-

Rafique Maqbool Qureshi

... Applicant

v/s.

The State of Maharashtra

.... Respondent

**WITH
INTERIM APPLICATION NO. 2672 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 1448 OF 2022**

Abdulla Allauddin

.... Intervenor

In the matter between :-

Rafique Maqbool Qureshi

... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Rajiv Chavan, Sr. advocate a/w. Ms. Manpreet Kaur
and Mr. Suhail Shariff i/b. Falcon Legal for the Applicant.

Ms. A.A. Takalkar, APP for the State.

Mr. Imran Farooqui for Respondent No.2.

Mr. Fakhruddin Khan for the Intervenor.

Mr. Ingale and Mr. Jamadar, IO, Santacruz Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 28th JULY, 2023.

P. C. :-

. The Applicant apprehends his arrest in C.R.No.261/2017

registered with Santacruz Police Station, Mumbai for the offences punishable under sections 406, 420 of the Indian Penal Code and sections 3 and 4 of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

2. Heard learned senior 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 aforesaid crime was registered pursuant to the FIR lodged by Umar Khatri. The facts narrated in the FIR prima facie reveal that the Applicant herein had undertaken construction of building. The first informant and several others had purchased flats for sale consideration of Rs.60,96,000/-. The first informant had paid an amount of Rs.40,00,000/-. The grievance of the first informant was that even after the lapse of 10 years, the Applicant had not completed the construction of building and had not issued allotment letter. He also learnt that the Applicant has not obtained necessary permissions. On the basis of the aforesaid allegations, crime came to be registered against the Applicant.

4. The records reveal that the application under section 438 of Cr.P.C. filed by the Applicant was rejected by this Court (Coram : M.S. Karnik, J.) vide order dated 01/04/2022. This Court had observed that the developer had commenced construction without obtaining an approval from the planning authority. Even after dismissal of this Application, the Court had continued interim protection for a limited period only to enable the Applicant to obtain the permission and to regularize the construction particularly keeping in mind the fact that the first informant was also interested in getting possession of the flat.

5. Mr. Chavan, learned senior counsel for the Applicant states that pursuant to the said order, the Applicant has obtained all requisite permissions including Occupancy Certificate. He further states that out of 70 purchasers, 25 purchasers have entered into registered agreement and taken possession of the premises. He further submits that the first informant and others have also been called upon to take possession and to execute the agreement in respect of their respective premises.

6. It appears that the first informant and the other intervenors are not inclined to enter into an agreement since some of the clauses of the agreement are not agreeable to them. Suffice it to say that the first

informant and the other intervenors can redress their grievance before the appropriate forum and such dispute cannot be a ground for rejecting the application. Moreover, charge sheet has already been filed and the presence of the Applicant is not required for custodial interrogation.

7. Considering the fact that the Applicant has now completed the construction of the building and that the construction has been regularized and Occupancy Certificate has been granted and that the Applicant is ready to handover possession of the premises to the Intervenor as per the agreement, in my considered view, this is a fit case to exercise discretion under section 438 of Cr.P.C. Hence, the Application is allowed on the following terms and conditions :-

(a) In the event of arrest of the Applicant in C.R.No.261/2017 registered with Santacruz 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 as and when required ;

(c) The Applicant 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.

8. The Application for Anticipatory Bail and Interim Applications stand disposed of in above terms.

**PREETI
HEERO
JAYANI**

Digitally signed by
PREETI HEERO
JAYANI
Date: 2023.08.03
17:37:00 +0530

(SMT. ANUJA PRABHUDESSAI, J.)