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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1573 OF 2023**

Harshad Balu Gawde

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. D. N. Salvi a/w Mr. Narendra, Kalpoth a/w Mr. Sahil D. Salvi and
Mr. Sagar Redkar, Advocate for the Applicant.

Mr. Ganesh Gole a/w Mr. Atit Shirodkar, Advocate, for the
Intervenor.

Mr. S. R. Agarkar – APP, for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 5TH JUNE 2023

P. C. :

1. Heard learned Advocate for the Applicant, learned Advocate
for the first informant and learned APP for the Respondent-State.

2. The Investigating Officer is present. The offence is registered
on 13th April 2023, under section 406, 420 read with 34 of IPC on
the complaint of Vidya Dilip More. There are in all five named
accused persons. Accused Nos.2 to 5 have been granted anticipatory
bail by the Court of Additional Sessions Judge, Kalyan. Whereas the
accused no.1 Harshad Gawde is before this Court.

3. The first informant and others have entered into different agreements with Balu Gawde, who is predecessor in title of these accused persons. He expired on 18th February 2021. He has undertaken construction project at Balyani, Titwala and Kolivali, Kalyan.

4. The first informant along with one Mohammed Ashraf Sheikh has agreed to purchase the area admeasuring 6000 sq. ft. and 3000 sq. ft. for Rs.70,00,000/- and Rs.30,00,000/- respectively. It is in respect of project undertaken at Balyani, Titwala. Furthermore, the first informant, her son Gaurav and her brother Mahendra Naik have agreed to purchase different flats from said Balu Gawde in respect of project undertaken by name Tanishq Residency at Kolivali, Kalyan. There are different agreements.

5. The Applicant is admitting only the transactions in respect of project undertaken at Balyani, Titwala. The said agreement is at page 16. My attention is invited to the document having endorsement of the stamp vendor on page 17. It says about partnership deed, whereas the document on page 16 is described as Memorandum of Understanding (for short "MoU"). Apart from this there are other agreements which are annexed to the Application.

They are as follows :-

- (a) MoU dated 17th December 2019 executed in between the first informant and deceased Balu Gawade. It is in respect of project at Mauje Kolivali. Similarly on page 29, the nature of document is described as the partnership deed.
- (b) Agreement for sale dated 18th December 2019, executed in between Mahendra Naik, brother of the first informant and Sai Malhar Builders and Developers, proprietor, Balu Gawde. It is in respect of project at Balyani, Taluka Kalyan.
- (c) Agreement for sale dated 18th December 2019, in between Sai Malhar Builders and Developers and partners of Balu Gawade and Mohammed Ashraf. It is in respect of project at Balyani, Taluka Kalyan.
- (d) Deed of assignment dated 10th March 2021, at page 61 in between said Mohammed Ashraf and Mahendra Naik (The said Ashraf has assigned said rights in respect of said Mahendra Naik).

6. As stated above, except for agreement of Rs.70,00,000/- the present Applicant has disputed execution of all these agreements by

his father.

7. As against this, learned Advocate for the first informant and learned APP pointed out that these agreements, in fact, were executed by Balu Gawde during his lifetime and there are also receipts issued by him towards payment of part consideration.

8. Learned Advocate Shri Salvi made the following submissions :

- (a) Liability cannot be fastened upon son being legal heir of deceased father, who was a proprietor.
- (b) His father has never executed those agreements and they are inherent lacunae in the documents as pointed out above.
- (c) In fact at the most it can be said to be civil dispute which is converted into criminal litigation.
- (d) Custodial interrogation of the Applicant is not required.

9. Learned Advocate Mr. Salvi has read over the averments in the FIR and submitted that even if the averments are accepted for sake of argument, they are prima facie false because how the payment can be made to Shri Balu Gawde earlier to his interaction on 18th December 2019.

10. As against this, learned APP and learned Advocate for the first informant submitted that the first informant and her relatives, they are from middle class family and they have invested the amount in the project. According to them it will be premature at this stage to decide whether they can be considered as the investors. They submitted that said Balu Gawde carried on business in the name and style of M/s. Sai Malhar Builders and Developers and M/s. Sai Durga Builders and Developers. According to them present Applicant is also partner in Sai Durga Builders and Developers and in fact payment of Rs.70,00,000/- is transferred in the account of M/s.Sai Durga Builders and Developers. According to them, present Applicant during the lifetime of his father has also participated in the project and he was fully aware about the transaction entered into by his father.

11. Learned APP brought to my notice an Affidavit filed before the RERA Authority. It is joint affidavit and one of the executant is present Applicant and he has admitted that two projects will be looked after by him. My attention is also invited to two certificates issued by the RERA Authority thereby specifying that the project at Survey No.56 and other numbers titled as M/s. Sai Kanhuji Police

Sankul is registered with RERA Authority and another project with name M/s.Om Tanishq Residency is also registered with RERA Authority.

12. During arguments learned Advocate Shri Salvi for the Applicant has expressed willingness of the Applicant to deposit Rs.70,00,000/- before this Court.

13. This Court will have to look into issue whether custodial interrogation of the Applicant is required or not. Admittedly, the present Applicant is partner of M/s. Sai Durga Builders and Developers along with his father. Whereas as per said affidavit before the RERA Authority, he has undertaken to look after responsibility of construction of two projects i.e. M/s. Sai Durga Builders and Developers and M/s. Om Tanishq Residency.

14. After hearing both sides, I am of the considered opinion that custodial interrogation of the Applicant is not required. It is for the reason that original agreements are with the first informant and his relatives. So far as payment is concerned, the investigating agency can collect the receipts from the first informant. I do not see that the custodial interrogation of the Applicant is required. Ultimately, the Court will have to look into the issue, considering the criminal

liability only and just because the Applicant and her relatives have paid consideration or invested in the project, for purpose of recovery of those amount the anticipatory bail Application cannot be rejected. This is apart from the fact that the Applicant, who is an Advocate has expressed willingness to deposit Rs.70,00,000/-.

15. Even though notice under section 41-A of the Code of Criminal Procedure was issued, but it could not be served. The Applicant has made out a case for grant of anticipatory bail. Hence, the following order is passed :

ORDER

- (a) In the event of arrest, in connection with C.R. No.176 of 2023 registered with Mahatma Phule police station for the offences punishable under sections 406, 420 read with 34 of IPC. the Applicant-Harshad Balu Gawde be released on bail on furnishing personal bond and surety bond of Rs.50,000/-.
- (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
- (c) The Applicant shall give attendance to the Mahatma Phule police station on every Wednesday from 10 am to 12 noon till filing of the charge-sheet.

- (d) The willingness shown on behalf of the Applicant to deposit Rs.70,00,000/- is accepted and the Applicant to deposit the said amount within two weeks from today in the Registry.
 - (e) The prayer for withdrawal of the amount just made on behalf of the first informant will be considered once the amount is deposited by the Applicant.
 - (f) Needless to say, violating of the condition above will make the Applicant liable for cancellation of anticipatory bail, after notice to the Applicant.
16. Application is disposed of accordingly.
17. These are my prima facie observations and the trial Court may not be influenced by that.
18. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]