



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 879 OF 2021**

Mr. Junaid Ahmed Khan
Aged: 38 yrs, Occ: Business.
Residing at: 1/A/64, Bombay
Taximan Colony, C.H.S., 306
L.B.S. Marg, Near B.K.C.,
Kurla (West), Mumbai – 400 070

...Appellant

Versus

State of Maharashtra
(Through Nayanagar Police
Station, Thane)

...Respondent

Mr. Avinash Avhad i/b Mr. Pravin U. Gaikwad for the appellant
Mrs. P. P. Shinde, APP for the State

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 18th AUGUST 2023

JUDGMENT: (PER: GAURI GODSE, J.)

1. Heard learned counsel for the parties.
2. Admit. By consent of the parties, the appeal is taken up for final disposal. Learned APP waives service for the respondent-State of Maharashtra.

3. This appeal is preferred for challenging the Judgment and Order dated 25th August 2021 passed by the learned Additional Sessions Judge, Thane, below Exhibit 1 in M.A. No. 98 of 2021 in MPID Special Case No. 14 of 2019 in CR No. I-300 of 2019, dated 14th September 2019. By the impugned Judgment and Order, the learned Judge rejected the application under Section 7 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (“MPID Act”) filed by the appellant for the release of his property being Flat No. 002, building No. 6, 7 and 8, Chandresh Acord C.H.S., Meera Road, District: Thane (East) (“said flat”). The said flat is attached by the investigating agency during the course of investigation in C.R. No. I-300 of 2019 registered with Nayanagar Police Station, Thane Gramin, for the alleged offences punishable under sections 420, 120(B), 409, 406 and 34 of the Indian Penal Code.

4. Learned counsel for the appellant submitted that the appellant is a bonafide purchaser of the said flat. It is the case of the appellant that he has purchased the said flat from Mr. Mohd. Amin Habib Malpara,

Mr. Maajid Rahim Saliya and Mr. Munaaf Malang Patel, who have been arraigned as accused in the said CR. It is contended by the appellant that he had no knowledge with respect to the offences alleged in said CR at the time of purchase of the said flat. Learned counsel for the appellant submitted that before purchasing the said flat, the appellant had issued a public notice in the local newspaper calling for objections with respect to the said flat. However, he never received any objection. Thus, it is his case that after due diligence, the appellant purchased the said flat, hence, he is a bonafide purchaser.

5. Learned counsel for the appellant submitted that it is not disputed that no case was registered against the accused at the time of purchase of the said flat and when the possession was handed over to the appellant. He submitted that the appellant purchased the said flat vide registered sale deed dated 23rd August 2019, and the appellant was put in possession on 24th August 2019. Learned counsel for the appellant submitted that it was only post the purchase of the said flat by the appellant that the aforesaid CR was registered against the appellant's vendor. He submitted that admittedly, the appellant is not

an accused in the said CR. It is further submitted that the said flat is attached by the investigating agency-Economic Offences Wing, Thane, in the course of the investigation and that the attachment is not made by the competent authority under the MPID Act.

6. Learned counsel for the appellant has tendered an affidavit-cum-undertaking dated 3rd August 2023 duly sworn by the appellant stating therein that in the event the said flat is released by this Court, then he will not sell, assign, transfer, create lien or create third party rights in the said flat without taking prior permission of the MPID Court in M.A. No. 98 of 2021 in MPID Special Case No. 14 of 2019 in CR No. 300 of 2019. The said affidavit-cum-undertaking is taken on record.

7. Learned counsel for the appellant has relied upon the Judgment and Order dated 24th August 2022 passed by this Court (Coram: Revati Mohite Dere and Sharmila U. Deshmukh, JJ.) in Criminal Appeal No. 877 of 2021. He submitted that in a similarly situated appeal, this Court, by accepting the affidavit-cum-undertaking filed on

behalf of the appellant therein, allowed the appeal by setting aside the order passed by the Special Court rejecting the application for release of the property. Thus, by accepting the undertaking given by the appellant therein, the appeal filed by the appellant therein was allowed. Learned counsel for the appellant, by relying upon the said case, submitted that the facts of the present case are also similar and, hence, a similar order be passed in the present appeal by accepting the affidavit-cum-undertaking submitted on behalf of the appellant.

8. Learned APP does not dispute the fact that the investigating agency has attached the said flat during the course of the investigation of the aforesaid CR and that, till date, the competent authority under the MPID Act has not attached the said flat. Learned APP also does not dispute that the appellant is not an accused in the said CR.

9. Considered the submissions made by both parties. We have perused the aforesaid judgment and order passed by this Court in Criminal Appeal No. 877 of 2021. The said appeal was also arising out of the same CR No. I-300 of 2019 registered with Nayanagar

Police Station, and the facts of the said appeal are similar to those of the present appeal. Perused the papers of the appeal. Perusal of the papers indicates that the appellant had issued a public notice dated 31st July 2019 before purchasing the said flat vide registered sale deed dated 23rd August 2019. The said registered sale deed was executed by Mr. Mohd. Amin Habib Malpara, Mr. Maajid Rahim Saliya and Mr. Munaaf Malang Patel, who are shown as accused in the aforesaid CR. The record of the appeal further indicates that the possession of the said flat was handed over by the said vendors to the appellant on 24th August 2019. The said CR is registered on 14th September 2019, post the registration of the aforesaid sale deed in favour of the appellant. The record further indicates that during the course of the investigation of the aforesaid CR, the said flat was attached.

10. As stated aforesaid, the competent authority under the MPID Act has not attached the said flat. In the affidavit-cum-undertaking tendered by the appellant today, the appellant has given undertaking in paragraph no. 4 of the said affidavit, which reads as under:

“4. I say that I hereby give undertaking to this Hon’ble Court that in the event if the above mentioned property came to be release by this Hon’ble Court then I will not sell, assign transfer, create lien or create third party rights in this property situated at Flat No. 002, building No. 6, 7 & 8, Chandresh Acord C.H.S., Meera Road, Dist. Thane(East), without taking prior permission of the Ld. Special Court for MPID, at Thane in M.P.I.D. Special Case No. 14 of 2019 in C.R. No. I 300/2019.”

11. Considering the aforesaid, particularly the aforesaid affidavit-cum-undertaking, we quash and set aside the impugned order passed by the learned Additional Sessions Judge, Thane, below Exhibit 1 in M.A. No. 98 of 2021 in MPID Special Case No. 14 of 2019 in CR No. I-300 of 2019 registered with Nayanagar Police Station.

12. We clarify that the appellant shall not sell, assign, transfer, alienate or create third-party rights in the said flat, i.e. Flat No. 002, building No. 6, 7 & 8, Chandresh Acord C.H.S., Meera Road, Dist. Thane (East) without the permission of the MPID Court.

13. A copy of the affidavit-cum-undertaking tendered today on behalf of the appellant be placed by the appellant on the file of the Special MPID Court within two weeks from the date of uploading this order.

14. The appeal is allowed in the aforesaid terms.

15. All parties to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.