



Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 2339 OF 2023

Mahesh Kumar Garodia

...Applicant

Vs.

The State of Maharashtra and Others

...Respondents

ANTICIPATORY BAIL APPLICATION NO. 2326 OF 2023

Abhishek M. Garodia

...Applicant

Vs.

The State of Maharashtra and Others

...Respondents

Mr. Aabad Ponda, Senior Counsel with Mr. Pradeep Thorat with Ms. Kausar Banatwalla with Mr. Jugal K. with Mr. Neuty N. Thakkar with Mr. Viraj Bansod with Mr. Ritesh Kursange i/b Mr. Tushar Goradia i/b Mr. Jagdish Choudhary i/b Raj Legal, for Applicants.

Mr. Mahesh B. Gupta, for Respondent No. 2 in ABA/2326/2023.

Mrs. A. A. Takalkar, APP for State.

Mr. Patil, API, Park Site Police Station, present.

CORAM:- N. J. JAMADAR, J.

DATED:- 10th OCTOBER, 2023

ORDER:-

1) Heard the learned counsel for the applicants and the learned APP for the State.

2) These applications are preferred for pre-arrest bail in connection with C.R. No. 229 of 2023, registered with Park Site police station, for the offences punishable under Sections 420 and 406 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code") and Sections 13 and 14 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, management and Transfer) Act, 1963.

3) The gravamen of indictment against the applicants is that the applicants who were the Directors of M/s. Abhini Developers Pvt. Ltd., had induced the first informant to part with an amount of Rs.39,99,941/-by making a promise that the first informant would be delivered a flat in the project, which was then being developed by the applicants, before 15th December, 2007, but the applicants committed default in the delivery of flat, as promised, and breach of various obligations as the promoters of the said project.

4) The learned Senior Counsel for the applicants and the learned Counsel for the first informant – Respondent No. 2 informed the Court that the applicants and the first informant

have amicably resolved the dispute and the applicants have paid an amount in full and final satisfaction of the claim of the first informant. The first informant has also filed an affidavit on 27th September, 2023 for quashing the FIR registered against the applicants at her instance.

5) An affidavit of the first informant came be tendered before this Court. From the perusal of the said affidavit, it becomes evident that the first informant has received an amount of Rs.53,87,193/- towards the refund of the amount, which she had paid, along with interest thereon.

6) Since the parties have amicably resolved the dispute which, prima facie, appears to be in the realm of failure to perform the promise, at this stage, the custodial interrogation of the applicants does not seem warranted to facilitate further investigation.

7) I am, therefore, inclined to exercise the discretion in favour of the applicants.

8) Hence, the following order:-

ORDER

I) In the event of arrest of the applicants in connection with C.R. No. 229 of 2023, registered with Park Site police station, for the offences punishable under Sections 420

and 406 read with Section 34 of Indian Penal Code, 1860 and Sections 13 and 14 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, management and Transfer) Act, 1963, the applicants be released on bail on executing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

II) The applicants shall co-operate with the investigation and attend Park Site police station as and when directed by Investigating Officer.

III) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

IV) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

V) The applications stand disposed.

[N. J. JAMADAR, J.]