

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

**CRIMINAL BAIL APPLICATION NO.3845 OF 2021
WITH
CRIMINAL BAIL APPLICATION NO.3848 OF 2021**

Azam Khan ..Applicant
Versus
State of Maharashtra ..Respondent

**WITH
INTERIM APPLICATION NO.604 OF 2022
IN
BAIL APPLICATION NO.3845 OF 2021**

Tarique Shaukat Chunawala ..Intervenor

IN THE MATTER BETWEEN

Azam Khan ..Applicant
Versus
State of Maharashtra ..Respondent

**WITH
INTERIM APPLICATION NO.4019 OF 2022
IN
CRIMINAL BAIL APPLICATION NO.3845 OF 2021
WITH
INTERIM APPLICATION NO.4018 OF 2022
IN
BAIL APPLICATION NO.3848 OF 2021**

Dharamveer Singh ..Intervenor

IN THE MATTER BETWEEN

Mr. Mohammad Azam Abdul Aziz Khan ..Applicant

Versus
State of Maharashtra

..Respondent

Ms. Anjali Patil a/w Mallika Sharma i/by Abdeali Kothawala, for the Applicant in both BAs.

Mr. Aamir Malik a/w Zuber Chakoli i/by Jay & Co., for the Intervenor in IA Nos.4019/2022 & 4018/2022.

Mr. A. R. Kapadnis, APP for the Respondent/State.

Mr. Anand Mudaliar, Police Inspector, MBVV, Police Commissionerate – present.

CORAM : NITIN W. SAMBRE, J.

DATE : 9th FEBRUARY, 2023

PC.

1. Bail Application No.3845 of 2021 is moved by the applicant seeking bail in Crime No.I-152 of 2015 registered with EOW, Palghar, Arnala Sagari Police Station, Dist. Thane for the offence punishable under Sections 120B, 409, 406, 467, 468, 471, 420 r/w 34 of IPC and Sections 13 and 14 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and Sections 3 and 4 of the Maharashtra Protection of Interest (in Financial Establishment) of Depositors Act, 1999.

2. In so far as Bail Application No.3848 of 2021 is concerned, same is moved by the applicant seeking bail in Crime No.I-158 of 2015 registered with EOW, Palghar, Arnala Sagari Police Station, Dist. Thane for the offence punishable under Sections 120B, 409, 406, 467, 468, 471, 420 r/w 34 of IPC and Sections 13 and 14

of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and Sections 3 and 4 of the Maharashtra Protection of Interest (in Financial Establishment) of Depositors Act, 1999

3. The case of the prosecution against the applicant is that the applicant, a director in Ionic Reality accepted the hefty amount by promising delivery of developed property, however, has failed to honour the same resulting into registration of aforesaid offences.

4. The detail factual matrix is already recorded by this Court in the order dated 12th April, 2019 while deciding Criminal Bail Application No.1414 of 2017 with Criminal Application No.163 of 2019.

5. The submissions of counsel for the applicant, Ms. Anjali Patil for seeking relief under Section 439 of the CrPC are that after the applicant's arrest on 7th September, 2016, he has suffered incarceration for a period of more than six years. According to her, considering the maximum punishment provided in the aforesaid sections for which the applicant is charge-sheeted, he can be considered to have undergone more than 50% of the punishment. Relying on the provisions of Section 436A of the CrPC, she would urge that the applicant in the aforesaid background needs to be released.

6. Apart from above, according to her, the entire project is taken over by co-accused Mr. Vishram Sawant, who is already ordered to be released on bail by this Court in Bail Application No.1604 of 2021 decided on 28th November, 2022. According to her, the property which is attached by the designated Court under the MPID Act is worth more than thousand crores and as such, interest of the persons/complainants who have booked the flats is already safeguarded. That being so, he would urge that the applicant deserves to be released.

7. While countering the aforesaid submissions, learned APP assisted by the counsel for the complainants would oppose the prayer. According to learned APP, some of the offences are punishable with life imprisonment. He would urge that the offences which are economic in nature are required to be viewed and dealt with strictly. Learned APP would urge that the other co-accused Mr. Vishram Sawant even if is ordered to be released, the fact remains that the said accused has taken over the project in the form of financial liability but not the criminal liability. As such, it is prayed that the application deserves to be rejected.

8. I have considered the above referred submissions.

9. The fact remains that the applicant has suffered the incarceration for a period of more than six years from the date of his arrest. It is not likelihood that the trial of the applicant is likely to

be concluded in the recent future considering the fact that even after the lapse of six years of his arrest the charge is not framed.

10. Apart from above, this Court has called the affidavit from the competent authority under the MPID Act and the orders passed by the Special Court under the MPID Act would reflect that the interest of the complainants and the other similarly placed persons who have paid consideration is already safeguarded, as property attached is worth more than the financial liability. In the aforesaid background and having regard to the provisions of Section 436A of the CrPC, the interest of the complainants is already safeguarded and the similarly placed accused having been already released on bail, in my opinion, the applicant deserves to be released.

11. Applicant is directed to be released on bail on executing PR bond of Rs.2,00,000/- with or two sureties in the like amount in Crime No.I-152 of 2015, so also in Crime No.I-158 of 2015 registered with EOW, Palghar, Arnala Sagari Police Station, Dist. Thane.

12. Applicant shall surrender his Passport, if not already surrendered, forthwith to the Special Court and shall not leave country without express permission from the Court.

13. Applicant shall attend Trial Court regularly and any

unreasonable absence on two occasions, will entail the Court below to take out proceedings for cancellation of bail.

14. Applicant shall not try to contact the complainant or similarly placed persons so as to influence the witnesses or tamper with the evidence.

15. Applicant shall attend concerned police station in first week of every English calendar month.

16. Both the applications as such stand allowed in above terms.

17. Pending interim applications also stand disposed of.

[NITIN W. SAMBRE, J.]