2023:BHC-AS:31788

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2569 OF 2023

Amit Prakash Masaliya ... Applicant
versus
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.3360 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2569 OF 2023

Munir Abdul Latiff Gazi ... Applicant/Intervener
and
Amit Prakash Masaliya ... Applicant
versus
State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.2573 OF 2023

Prakash Rasiklal Masaliya ... Applicant
versus
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.3359 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2573 OF 2023

Munir Abdul Latiff Gazi ... Applicant/Intervener
and
Prakash Masaliya ... Applicant
versus
State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.2575 OF 2023

Payal Amit Masaliya ... Applicant
versus
The State of Maharashtra ... Respondent

WITH

INTERIM APPLICATION NO.3353 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2575 OF 2023

Munir Abdul Latiff Gazi	...	Applicant/Intervener
and		
Payal Amit Masaliya	...	Applicant
versus		
State of Maharashtra	...	Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.2571 OF 2023

Siddharth Chimanlal Shah	...	Applicant
versus		
State of Maharashtra	...	Respondent

WITH
INTERIM APPLICATION NO.3358 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2571 OF 2023

Munir Abdul Latiff Gazi	...	Applicant/Intervener
and		
Siddharth Chimanlal Shah	...	Applicant
versus		
State of Maharashtra	...	Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.2572 OF 2023

Ankit Shah	...	Applicant
versus		
State of Maharashtra	...	Respondent

WITH
INTERIM APPLICATION NO.3354 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2572 OF 2023

Munir Abdul Latiff Gazi	...	Applicant/Intervener
and		
Ankit Shah	...	Applicant
versus		

State of Maharashtra ... Respondent

Mr. Shirish Gupte, Sr. Advocate with Mr. J.S.Kini, Mr. Aum Kini i/by Ms. Sapna Krishnappa, for Applicant in ABA 2569 of 2023.
Mr. J.S.Kini i/by Ms. Sapna Krishpanna for Applicant in ABA 2573 of 2023.
Mr. Rajiv Patil, Sr. Advocate i/by Ms. Sapna Krishpanna, for Applicant in ABA 2575 of 2023.
Mr. Ashok Mundargi, Sr. Advocate i/by Ms. Sapna Krishnappa, for Applicant in ABA 2571 of 2023.
Mr. Deepak Thakare i/by Ms. Sapna Krishnappa, for Applicant in ABA 2572 of 2023.
Smt. A.A.Takalkar, APP for State.
Mr. Aabad Ponda, Sr. Advocate i/by Mr. Muddassar Bagadia, for Interveners in IA 3360 of 2023, 3358 of 2023 and 3354 of 2023.
Mr. Yashpal Thakur i/by Muddassar Bagadia, for Interveners in IA No.3353 of 2023 and 3359 of 2023.
Mr. N.S.Kanase, API, EOW, Palghar, present.

CORAM: N.J.JAMADAR, J.

DATE : 17 OCTOBER 2023

P.C.

1. Heard the learned Counsel for the parties.

2. These applications are for pre-arrest bail in connection with C.R.No.265 of 2023 registered with Boisar Police Station for the offences punishable under Sections 120B, 409, 420, 467, 471 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositers (in Financial Establishments) Act, 1999.

3. Amit Masaliya, Applicant in ABA No.2569 of 2023, Prakash Masaliya, Applicant in ABA 2573 of 2023 and Payal Amit Masaliya, Applicant in ABA 2575 of 2023 (Accused Nos.2 to 4) are stated to be the partners of M/s. Gold Star Realtors -

Accused No.1. Siddharth Chimanlal Shah, Applicant in ABA 2571 of 2023, and Ankit Shah, Applicant in ABA 2572 of 2023 (Accused Nos.6 and 7) are stated to be the directors of M/s. J.E. Marketing & Services Pvt. Ltd. (Accused No.5). M/s. India Infoline Finance Limited is the Accused No.8. Accused Nos.9 to 12 are the directors and/or persons responsible for the affairs of Accused No.8.

4. The gravamen of indictment against the abovenamed accused and the co-accused runs as under :

4.1 Dr. Munir Abdul Latiff Gazi, first informant, his wife and brother are the owners of land bearing Survey Nos.45, 46, 47 and 53 situated at Mauje Kambalgaon, Taluka and District Palghar, admeasuring about 48,490 sq. meters. On 28 December 2010 a Development Agreement to develop a housing project 'Colour Discovery' came to be executed between the owners and and M/s. Gold Star (developer).

4.2 The principal terms of the Development Agreement were that the owners would be entitled to 37.5% and the developer would be entitled to get 62.5% of the constructed portion as per admissible FSI. The developer shall complete the project within 48 months of the grant of the commencement certificate. M/s. Goldstar was not entitled to induct new partners than those who were the partners of M/s. Goldstar at the time of the execution of the Development Agreement. M/s. Goldstar was not to appoint another developer without the prior permission of the owners. Nor the subject lands were to be transferred, mortgaged or provided as security to raise finance without the written permission of the owners. The developer was, thus, not to raise any money on the security of the subject lands.

4.3 To facilitate the execution of the project, the owners had executed a Power of Attorney in favour of M/s. Goldstar on 2 February 2011.

4.4 M/s. Goldstar did not execute and complete the project within the stipulated period and, instead, utilized the subject lands to the advantage of the project at Survey No.43. The then partners of M/s. Goldstar retired from the partnership and the applicant Nos.1 to 3 were brought in as the partners of M/s. Goldstar on 11 July 2011 without the permission of the owners.

4.5 As there were breaches of contract on the part of M/s. Goldstar, the owners professed to terminate the Development Agreement vide Notices dated 20 August 2015 and 29 July 2017. M/s. Goldstar had entered into agreements to sell 311 flats and shops in Phase II and III and received consideration of Rs.18 Crores. As the project could not be completed and the possession of the flats were not given to the purchasers, few of the purchasers approached MAHARERA. On 5 July 2022, MAHARERA appointed the first informant as the promoter of the project and entrusted him with the responsibility to complete the project.

4.6 The first informant alleged, despite the aforesaid orders, M/s. Goldstar entered into agreements in respect of five flats with the purchasers and received consideration of Rs.85 Lakhs. M/s. Goldstar had unlawfully appointed a developer

M/s. Veena Developers Pvt. Ltd., - Accused No.14, of which Accused Nos.16 and 17, are the directors, who, in turn, allotted to 28 flats to the purchasers and received consideration of Rs.1.10 Crores. The first informant alleged, while the project was being so developed by the first informant, on 29 March 2023, a possession notice under Rule 8(1) of the Securitisation the Reconstruction of Financial Assets the Enforcement of Security Interest Rules, 2002 was served by the Assets Reconstruction Company India Limited (ARCIL), whereby the said company professed to take possession of the developer's share of all unsold units and development rights and all free saleable area, plot Nos.45, 46, 47 & 54 (Phase II & III).

4.7 Upon enquiry, it transpired that Accused No.8 – M/s. India Infoline Finance Limited had advanced a loan of Rs.70 Crores in connivance with Accused Nos.1 to 7 and without due diligence. Subsequently, Accused No.8 had assigned the said loan to ARCIL. M/s. Goldstar had not taken permission of the owners to create security interest in the subject lands. It further transpired that to show that the owners had given consent for raising the money on the security of the subject lands, the accused forged NOC dated 7 May 2019 purportedly signed by the first informant, his wife and brother and used the said forged NOC as genuine. Thereby the accused defrauded an amount of Rs.64 crores. Hence, the report.

4.8. Apprehending arrest, the applicants approached the Court of Session. As the learned Additional Sessions Judge declined to exercise the discretion in favour of the applicants, these applications for pre-arrest bail.

5. I have heard Mr. Shirish Gupte, learned Senior Advocate for the Applicant in ABA No.2569 of 2023, Mr. J.S.Kini, learned Counsel for the Applicant in ABA No.2573 of 2023, Mr. Patil, learned Senior Advocate for the Applicant in ABA 2575 of 2023, Mr. Ashok Mundargi, learned Senior Advocate for Applicant in ABA 2571 of 2023, Mr. Deepak Thakare, learned Counsel for the Applicant in ABA No.2572 of 2023, Mrs. Ashwini Takalkar, learned APP for State, Mr. Aabad Ponda, learned Senior Advocate for the Interveners in IA 3360 of 2023, 3358 of 2023 and 3354 of 2023 and Mr. Thakur for the Interveners in IA No.3353 of 2023 and 3359 of 2023.

6. Mr. Shirish Gupte, learned Senior Advocate for the Applicant – Amit Masaliya would urge that the first informant has made an undisguised attempt to give a colour of prosecution to a purely a civil dispute. Amplifying the submission, Mr. Gupte would urge that the genesis of the alleged offences is in the development agreement executed between the owners and M/s. Goldstar. The owners, at best, alleged breaches of contract on the part of M/s. Goldstar. The allegations in the FIR, if considered in the backdrop of the fact that Phase II has been completely developed and a substantial work has been carried out in Phase III, are in the realm of failure to perform the contract. That can never be a ground for prosecution, submitted Mr. Gupte.

7. Mr. Gupte would further urge that despite two notices of termination

dated 20 August 2015 and 29 July 2017, the developer continued to develop the project with full knowledge and consent of the owners. Attention of the Court was invited to the whatsapp conversation to draw home the point that despite the termination notices, the first informant did not take any precipitatory steps.

8. Mr. Gupte would further urge that the raising of the loan in the capacity of co-borrower, with M/s. J.E. Marketing and Services Pvt. Ltd. (Accused No.5), also falls within the ambit of breach of the terms of the contract, for which remedies lie elsewhere. The allegations of forgery of NOC, according to Mr. Gupte, are vague and deserve to be apprised on the touchstone of probabilities as the material on record indicates that the development at site continued unabated. At any rate, the custodial interrogation of the applicant is not warranted as the offences revolve around documents, urged Mr.Gupte.

9. Mr. Kini, learned Counsel for Prakash Masaliya, supplemented the submissions of Mr. Gupte. It was urged that though Mr Pakash Masaliya is the partner of M/s. Goldstar, yet being of an advanced age and suffering from various ailments, Mr. Prakash has no role in the day to day affairs of M/s. Goldstar. Nor any specific role has been attributed to Mr. Prakash in the FIR. Therefore, Mr. Prakash deserves the exercise of discretion, urged Mr. Kini.

10. Mr. Patil, learned Senior Advocate appearing for Ms. Payal Masaliya, would urge that Ms. Payal had retired from M/s. Goldstar on 12 August 2015. She

has been roped in only for being the wife of Accused No.2 Amit Masaliya. Therefore, the arrest of Ms. Payal is wholly unwarranted.

11. Mr. Mundargi, learned Senior Advocate for Mr. Siddharth Shah, submitted that the applicant, or for that matter M/s. J.E. Marketing and its directors, have no role at all in the alleged transactions. In fact, M/s. J.E. Marketing is the victim of the machinations of Accused N.8 M/s. India Infoline Finance Ltd. M/s. J.E.Marketing was made to apply for a loan along with M/s. Goldstar, a farce of credit of an amount of Rs.50 Crores was made and, on the very day, the said amount came to be transferred to M/s. Meenakshi Towers LLP. M/s. J.E.Marketing was, thus, neither a privy to the fraud nor a beneficiary thereof.

12. An endeavour was made by Mr. Mundargi to urge that there was no reason or occasion for M/s. J.E.Marketing to forge NOC dated 7 May 2019. The loan was already sanctioned and disbused on 2 April 2019. Therefore, it cannot be said that the applicant used the allegedly forged NOC to avail the loan as a genuine document.

13. Mr. Deepak Thakare, learned Counsel for the Applicant – Ankit Shah, while adopting the submissions of Mr. Mundargi, urged that there is no material to connect the applicant with the alleged offences.

14. In opposition to this, Smt. Takalkar, learned APP stoutly submitted that the applicants in pursuance of a conspiracy have committed fraud to the tune of Rs.79 Crores. Home buyers have been defrauded of an amount of Rs.18 Crores. An amount

of Rs.61 Crores has been siphoned off by fraudulently creating security over the subject lands. Smt. Takalkar submitted with tenacity that the contention on behalf of M/s. J.E. Marketing that it had nothing to do with the alleged transactions and was not beneficiary of the alleged fraud is belied by the money trail, which shows that the substantial amount eventually returned to M/s. J.E.Marketing through a maze of transactions. The learned APP took the Court through the money trial to bolster up the aforesaid submissions.

15. Mr. Aabad Ponda, learned Senior Advocate for the first informant/Intervener, countered the submissions on behalf of the applicants. It was urged that the accused have committed offences in pursuance of a clear conspiracy. Taking the court through the covenants and recitals in the development agreement executed by and between the owners and the developers, it was submitted that the parties were fully cognizant of the position that the lands could neither be transferred nor any encumbrances could be created thereon without the written permission of the owners. Mr. Ponda would submit that the applicants cannot take refuge under the banner of a civil dispute. The documents on record, to which attention of the Court was invited, clearly indicate that there is a deep rooted conspiracy and in pursuance of the said conspiracy, the first informant, flat purchasers and the public at large, have been defrauded. Mr. Ponda invited the attention of the Court to the documents on the basis of which the loan was advanced by Accused No.8 – India Infoline and the

documents evidencing the assignment of the loan to ARCIL, which show that the NOC was not in existence on of the day it was purported to have been executed and has subsequently been forged when ARCIL insisted for the same.

16. Mr Thakur, learned Counsel for the First informant, took the Court through the documents to show the complicity of the applicants in those applications.

17. The jural relationship between the first informant as the owner and M/s. Goldstar and its partners as a developer, is not in contest. It is evidenced by the Development Agreement under which the developer agreed not to avail any loan / advance from any financial institutions / banks on the basis of the subject lands or on the basis of the rights granted therein by the owners for development or for any other purposes without the written consent of the owners. (Clause 21). The developer agreed not to assign or transfer the development rights and any other obligation therein at any time to any third person/party. (Clause 24). The project was to be completed within 48 months.

18. At this juncture and in this proceeding, the Court need not delve into the alleged breaches of contract on the part of M/s.Goldstar. It is the element of criminality with which the Court is primarily concerned.

19. First and foremost, the allegation of raising of loan by creating security interest in the subject lands. An undated application for loan seems to have been signed by the applicants – Siddharth and Ankit Shah in the capacity of the directors of

M/s. J.E.Marketing as borrowers and the applicant – Amit as the co-borrower. Sanction letter dated 1 April 2019 issued by India Infoline indicates that security interest was created in the subject lands to advance the said loan. Prima facie, while making the loan application, the owner was neither shown as a borrower, nor there is any document to show that the co-borrower M/s. Goldstar was armed with the permission of the owners. In fact, the allegedly forged NOC was professedly issued on 7 May 2019. Thus, it is evidently clear that the loan was raised by providing security of the subject lands without the permission of the owner in breach of the express terms of the contract.

20. What preceded and followed assumes material significance and sheds light on the, prima facie, complicity of the accused. On 30 March 2019 a resolution was passed by M/s. J.E.Marketing, to which the applicants Siddharth and Ankit are the signatories to borrow money in excess of aggregate of the paid up share capital and free reserve not in excess of Rs.70 Crores. A day before i.e. 29 March 2019, the board of directors of M/s. J.E.Marketing had resolved to approve the execution and signing of the MOU between M/s. J.E.Marketing and Meenkshi Towers LLP. It was further resolved to extend interest free security deposit to the extent of Rs.70 Crores in parts with immediate payment of interest free security deposit of Rs.50 Crores to Meenakshi Towers LLP. A day before i.e. 28 March 2019, the Board of directors of India Infoline resolved to approve the execution and signing of the agreement of LLP

to be entered into between IIFL, Shreyans Foundation LLP and to be a partner in Meenakshi Towers LLP. Unsurprisingly, on 2 April 2019, the moment the amount of Rs.50 Crores came to be transferred to the account of M/s. J.E.Marketing, it found its way to the account of Meenakshi Towers LLP.

21. The submission of Mr. Mundargi that M/s. J.E.Marketing had no role at all is, prima facie, demolished by the very documents which are annexed to the application of Mr. Siddharth Shah. The MOU was executed between Meenakshi Towers LLP and M/s. J.E.Marketing on 30 March 2019. It further appears that on 16 December 2019, the MOU between Meenakshi Towers LLP and M/s. J.E.Marketing came to be cancelled. It is imperative to note that under the terms of the Deed of Cancellation, Meenakshi Towers LLP was enjoined to refund the security deposit of Rs.50 Crores to M/s. J.E.Marketing. There are documents and bank entries to show that the money eventually came to be transferred to the account of M/s. J.E.Marketing.

22. The situation which prima facie emerges is that on the security of the subject lands, a loan was raised and the said amount was diverted to other entities. A communication dated 24 June 2019 addressed by the applicant Siddharth to India Infoline – Accused No.8, records that the said loan was raised for the purpose of residential project ‘ Luxury Imperia’ at Boisar, over the subject lands, and it was for a valid purpose and M/s. J.E.Marketing agreed, confirmed and undertook that the

purpose of the use of the funds under the loan shall not be changed in any manner. It would be suffice to observe the material on record shows to the contrary.

23. Secondly, the prima facie probabilities of the genuineness of NOC. In the face of the documents to show that there were proceedings before the MAHARERA at the instance of the flat purchasers and the owners had already terminated the development agreement, the grant of NOC by the owners to raise huge amount by providing security of the subject lands, would have been evidenced by contemporaneous material. On the contrary, Annexure I to the Assignment Agreement between India Infoline and ARCIL containing the details of the loan, security documents and the litigation documents referred to the NOC purported to be executed by the owners at Sr. No.48, without reference to the entity in whose custody the said document was. Accused No.8 – India Infoline, then did not claim custody of the said document. Prima facie, there is material to show that the forgery of the NOC is a matter which warrants investigation.

24. The use of the allegedly forged NOC as genuine is, prima facie, evidenced by the Declaration cum Undertaking cum Indemnity, on the 4th day of a Month in the year 2019 executed by Amit Masaliya, Accused No.2, and the directors of M/s. J.E.Marketing. It was, inter alia, declared that the owners have vide No Objection Certificate dated 7th May 2019 granted no objection for the developer to raise finance by creating security over the subject lands.

25. This propels me to the role of Applicants – Prakash and Payal. The submission that Prakash is not looking after the day to day affairs of M/s. Goldstar is belied by the execution of the agreement on behalf of M/s. Goldstar post the order passed by the MAHARERA on 5 July 2022, declaring that the Respondent No.1 – Goldstar had no authority to continue the said project. The element of criminality is also discernible in having a wrongful gain by entering into agreements with prospective purchasers despite being restrained by MAHARERA.

26. Ms. Payal claimed that she had retired as a partner of M/s. Goldstar on 12 August 2015. Again there are documents to show that a contrary stand was taken on 3 September 2015 that, as on that date, Ms. Payal was one of the partners of M/s. Goldstar. Attention of the Court was also invited to the application for pre-arrest bail, being ABA (ST) No.11175 of 2022, wherein Ms. Payal claimed to be a partner of M/s. Goldstar along with Mr. Prakash Masaliya. In a close knit family firm, it is easy to assert that one is not a partner and take an altogether different stand to suit the convenience of the situation. However, when a prima facie case of fraud is made out, I am not inclined to accede to such submission.

27. On the aspect of complicity of Siddharth and Ankit Shah, as noted above, there is material to show that the loan was obtained by providing security of the subject lands purportedly for the construction of the housing project and the money was siphoned off for other purposes and entities. Eventually, the subject lands have

been encumbered with huge liability. Moreover, there is prima facie material to suggest the forgery of NOC.

28. For the foregoing reasons, I am not inclined to accede to the submissions on behalf of the Applicants that the acts attributed to the applicants, at best, constitute breach of the terms of the contract and represent a purely civil dispute. The allegations are such that the custodial interrogation of each of the applicants is indispensable for complete and effective investigation. It is trite, interrogation in custody is qualitatively different. Where there is material to show prime facie fraud, forgery and use of the forged document, as genuine, the custodial interrogation is indispensable. In such cases, offer to co-operate with investigation, armed with protection of pre-arret bail, jeopardises causes of effective investigation to unearth the fraud in all its facets and, eventually, the cause of justice suffers.

29. A useful reference in this context can be made to a recent pronouncement of the Supreme Court in the case of **Pratibha Manchanda and Anr. V/s. State of Haryana and Anr.**[1] wherein paragraphs 25 and 28 read as under :

> "25. Land scams in India have been a persistent issue, involving fraudulent practices and illegal activities related to land acquisition, ownership, and transactions. Scammers often create fake land titles, forge sale deeds, or manipulate land records to show false ownership or an encumbrance-free status. Organized criminal networks often plan and execute these intricate scams, exploiting vulnerable individuals and communities, and resorting to intimidation or threats to force them to

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vacate their properties. These land scams not only result in financial losses for individuals and investors but also disrupt development projects, erode public trust, and hinder socio-economic progress.

28.It is immaterial that the genuineness of the 1996 GPA is already sub-judice before the Civil Court in the civil suits pending between the parties. The appellants, owing to their age and residential status, cannot be expected to await indefinitely for the outcome of these civil proceedings. Regardless, the pendency of these cases does not estop the issues of forgery and fabrication being considered in the course of criminal investigation. The facts of the case speak for themselves and an element of criminality cannot be ruled out at this stage. Whether or not the alleged offences were committed by Respondent No. 2 and his co-accused in active collusion with each other can be effectively determined by a free, fair, unhampered and dispassionate investigation. In the peculiar facts and circumstances of this case, custodial interrogation of not only Respondent No. 2 but all other suspects is, therefore, imperative to unearth the truth. Joining the investigation with a protective umbrella provided by pre-arrest bail will render the exercise of eliciting the truth ineffective in such like case. We are, as mentioned, also skeptical, suspicious and incredulous about the verification process of the 1996 GPA carried out by the Sub-Registrar, Kalkaji, New Delhi. Hence, the conduct of the officials of Sub-Registrar Office, Kalkaji, New Delhi is also required to be examined to take the investigation to its logical conclusion."

30. Thus, I am impelled to reject the applications.

ORDER

(i) The Anticipatory Bail Applications stand rejected.

(ii) Interim Applications also stand disposed.

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

(N.J.JAMADAR, J.)