

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2905 OF 2021
WITH
INTERIM APPLICATION NO. 627 OF 2022**

1] Chandrakant Janu Bhoir
2] Namdev Janu Bhoir ... Applicants

Versus

The State of Maharashtra ... Respondent

**AND
ANTICIPATORY BAIL APPLICATION NO. 2674 OF 2018
WITH**

INTERIM APPLICATION NO. 406 OF 2021

Mahendra Soohanlal Dagaliya ... Applicant

Versus

The State of Maharashtra ... Respondent

**AND
ANTICIPATORY BAIL APPLICATION NO. 2680 OF 2018
WITH**

CRIMINAL APPLICATION NO. 390 OF 2019

Afsarmiya Mehatab Karbhari ... Applicant

Versus

The State of Maharashtra ... Respondent

**AND
ANTICIPATORY BAIL APPLICATION NO. 2691 OF 2018
WITH**

INTERIM APPLICATION NO. 404 OF 2021

Lalitkumar Kapoorchand Jain ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Saurabh Butal for the Applicants in ABA-2905-2021.

Mr. Niranjan Mundargi instructed by Mr. Chaitanya Nikte for the applicant in ABA-2691-2018.

Mr. Karan Singh Rajput instructed by Mr. J.N. Jain for the applicant in ABA-2674-2018.

Mr. Hasan Sayed instructed by Mr. R.A. Shaikh for the applicants in ABA-2680-2018 and ABA-2674-2018.

Mr. Pawan Tiwari for the Applicants in all the Interim Applications and Criminal Application.

Ms. Veera Shinde, APP for the State.

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CORAM : N.R. BORKAR, J.

DATED : 3 FEBRUARY 2023

P.C. :-

. The applicants who are accused in Crime No. 199 of 2017 registered at Khandeshwar Police Station, Navi Mumbai for the offences punishable under Section 420 r/w. 34 of Indian Penal Code and Section 13-A of the Maharashtra Ownership Flats Act have filed these applications under Section 438 of Cr.P.C. for anticipatory bail.

2. On 22 December 2018, this Court in Anticipatory Bail Application Nos.2674 and 2680 of 2018 passed the following interim order :

“1] The applicants are apprehending arrest in CR No.199 of 2017 dated 5.10.2017 registered with Khandeshwar Police Station, Navi Mumbai under sections 420 read with 34 of Indian Penal Code and 4(1), 13(1) of Maharashtra Ownership Flat Act, 1963 (MOFA Act).

2] Heard the learned counsel for the applicants and the learned APP. Perused the record of investigation.

3] The first information report is lodged by Shri Mahendra Saitvadekar. It is the prosecution case that, the first informant was in search of a house in and around the vicinity of Panvel. His relatives informed him that, a building at village Usarli by name Gokulnagar was under construction and it was being constructed by Shree Utkarsh Enterprises, Builders and Developers. The firm Shree Utkarsh Enterprises, Panel was having three partners namely Mr. Harish Pawar, Mr. Lalit Jain and Mr. Mahendra Dagaliya. The first informant visited the office of the said firm and decided to purchase one BHK flat admeasuring 513 sq.ft. @ Rs.3666/- per sq.ft and paid consideration of Rs.4,45,000/- in the year 2013-2014. As the said building was not completed within agreed period and the informant did not get agreed flat, he made enquiry at the office of the firm, when it was told to him that, due to some problems in the said firm, its partners have decided to give the said project for further development to M/s United Buildcom a proprietor concern of the applicant Mr. Afsarmiya M. Karbhari. As the first informant did not get possession of agreed flat even after perusing all the concerned, he ultimately lodged the present first information report.

4] The record of investigation indicates that, there are about 19 flat purchasers who have paid sum of Rs.1,01,62,000/- (One Crore OneLakh Sixty Two Thousand Only) to M/s Shree Utkarsh Enterprises, builders and developers.

5] Mr. Shaikh the learned counsel for the applicant Afsarmiya Karbhari submitted that, the partners of M/s Shree Utkarsh Enterprises had approached his client for finance and/or taking over the said project for further development, to which in due course of time his client refused, after coming

to the knowledge about various litigations pertaining to the said property.

6] The record indicates that, the aforesaid Rs.1,01,62,000/- has been received by the aforesaid said firm Shree Utkarsh Enterprises. The Partnership Deed of the said firm discloses that, the applicant Mr.Mahendra Dagaliya is having 40% share in the said enterprise.

7] During the course of arguments, the learned counsel for the applicant Mr. Mahendra Dagaliya submitted that, with a view to prove his bonafide and without prejudice to his rights and contentions, the applicant Mr. Mahaendra Dagalia will deposit his share of 40% out of the alleged aforesaid amount received by the firm from flat purchasers i.e. approximately Rs.40.00 lakhs in the Registry of this Court within a period of four weeks from today. He on instruction submitted that, the applicant will deposit Rs.10.00 lakhs every week and will deposit the amount of Rs.40.00 lakhs on or before 22nd January 2019. The said statement is accepted.

8] In view thereof, the applicants are granted interim relief. Hence the following Order:-

(I) In the event of arrest in CR No.199 of 2017 registered with Khandeshwar Police Station, Navi Mumbai, the applicants shall be release don their furnish PR bond in the sum of Rs.25,000/- each with one or two separate solvent sureties.

(II) Applicants shall not tamper with evidence and/or influence the prosecution witnesses.

9] Stand over to 24th January 2019.”

3. Based on the above interim order, on 5 September 2019, this Court in Anticipatory Bail Application No.2691 of 2018 passed the following order :

“1. The Applicant is seeking anticipatory bail in connection with C.R.No. I 199 of 2017 registered with Khandeshwar Police Station, Navi Mumbai, on 05/10/2017, under section 420 r/w. 34 of the Indian Penal Code and Sections 4 and 13 of Maharashtra Ownership Flat Act, 1963 (MOFA Act.)

2. The FIR is lodged by one Saitwadekar. He has stated in his FIR that he wanted to purchase a flat near Panvel. He was informed that construction was going on at village Usarli, by name Gokul Nagar. It was being constructed by Shree Utkarsh Enterprises, Builders and Developers. It was a partnership firm having 3 partners namely Harish Pawar, Lalit Jain (present applicant) and Mahendra Dagliya. The informant paid Rs.4,45,000/- for purchasing 1 BHK flat admeasuring 513 sq.ft. The project was not completed and he was not handed over possession of the flat. He made further inquiries and he came to know that no permission was obtained by the applicant's firm to construct the building. He was convinced that he was cheated and his money was misappropriated and, therefore, he lodged this complaint.

3. I have heard Mr. Chaitanya Nikte, learned counsel for the applicant and Smt. J. S. Lohakare, learned APP for the State.

4. Learned APP seeks adjournment as the Investigating Officer is not present. However, the learned counsel for the applicant prays for interim relief in the matter. He relied on the order passed by this court (Coram : A. S. Gadkari, J.) dated 22/12/2018 in Anticipatory Bail Application No.2674 of 2018. He submitted that similar order can be passed in favour of the present applicant by way of interim protection.

5. I have perused that order. It is recorded in the order that there were about 19 flat purchasers who have paid around Rs.1,01,62,000/- to the applicant's firm. The applicant in that application Shri. Dagaliya had 40% share in the partnership firm. Learned counsel for the applicant states that even present applicant Shri. Jain has 40% share in the partnership firm. This court by the order dated 22/12/2018 had permitted Dagaliya to deposit Rs.40 lakhs in the Registry of this court and thereafter he was protected by an interim order. Shri. Nikte, learned counsel for the applicant makes a statement on instructions that the present applicant is willing to deposit Rs.40 lakhs in this court to show his bonafides. However, he needed some reasonable time to deposit that amount. He submitted that he shall deposit said amount without prejudice to the rights and contentions of either of the parties. In view

of this, even present applicant can be protected by similar order.

6. *Hence, the following order:*

ORDER

(i) *The applicant is permitted to deposit Rs.40 lakhs in the Registry of this court within a period of five weeks from today.*

(ii) *In the event of his arrest in connection with C.R.No. I199 of 2017 registered with Khandeshwar Police Station, Navi Mumbai, till the next date, the Applicant be released on bail on his executing P.R. bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.*

(iii) *This order shall operate till 17/10/2019.*

(iv) *Stand over to 17/10/2019.”*

4. This Court, thereafter, on 15 December 2021, passed the following order in anticipatory bail application No.2905 of 2021 :

“Learned Counsel for the applicants submits that there is one more Bail Application bearing No. 2691 of 2018 and that application is required to be tagged along with the present Bail Application. Registry is directed to tag the Bail Application bearing No. 2691 of 2018 along with the present bail application.

2 *Heard.*

3 *According to learned Counsel for the applicants, the applicants were co-sharer of the development of the property undertaken by M/s.Utkarsha Enterprises Builders and Developers who took the booking of various persons including the informant on the land of applicant. Informant accordingly booked one BHK and made a part payment of Rs.4,45,000/- towards the total consideration. However, it is alleged that the applicant neither gave a flat nor returned the part payment i.e. Rs.4,45,000/- given by him. Accordingly, FIR came to be lodged.*

4 *Having regard to the nature of accusations, in my view, applicant has made out a case for ad-interim protection.*

Hence, the following order.

ORDER

- (i) In the event of arrest of the applicant-accused Nos.1. Chandrakant Janu Bhoir and 2. Namdev Janu Bhoir in C.R.No.199 of 2017 registered with Khandeshwar Police Station, Navi Mumbai for the offences punishable under sections 420 r/w 34 of Indian Penal Code and Section 13-A of the Maharashtra Ownership Flats Act, the applicant be enlarged on bail on his furnishing PR & SB in the sum of Rs.25,000/- with one or two sureties.*
- (ii) The applicants shall make himself available for interrogation by a police officer of concerned police station as and when required.*
- (iii) The applicants shall not tamper with the prosecution evidence.*
- (iv) Issue notice to the concerned police station, returnable on 19th January, 2022.*
- (v) This order shall remain in force till the next date.”*

5. The learned Counsel for the applicants submits that till date the applicants have deposited One Crore Five Lakhs. The learned Counsel for the applicants in anticipatory bail Application No.2905 of 2021 submits that the applicants without prejudice to their rights are willing to deposit Rs.25 lakhs in addition to the above amount. Considering the facts and circumstances of the case and as there is no need of custodial interrogation, I am inclined to allow the present applications. In the result, the following order is passed :

- (i) The interim orders passed by this Court are hereby confirmed.
- (ii) The applicants in anticipatory bail application No.2905 of 2021 shall deposit Rs.25 lakhs in this Court within three months from today.
- (iii) The victims/complainants are at liberty to move an

applications for withdrawal of the amount deposited by the present applicants.

(iv) The anticipatory bail applications are disposed of in above terms. The interim applications and criminal applications stand disposed of.

(N.R. BORKAR, J.)

KANCHAN
PRASHANT
DHURI

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by KANCHAN
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