



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2515 OF 2023**

Paras Tarachand Jain ... Applicant
versus
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.3273 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2515 OF 2023

Hiten Shantilal Shah ... Applicant
and
Paras Tarachand Jain ... Applicant/accused
versus
The State of Maharashtra and Anr. ... Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO.2517 OF 2023

Naresh Chunilal Jain ... Applicant
versus
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.3292 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2517 OF 2023

Hiten Shantilal Shah ... Applicant
and
Paras Tarachand Jain ... Applicant/accused
versus
The State of Maharashtra and Anr. ... Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO.2562 OF 2023

Pranav Virendra Mehta ... Applicant
versus
The State of Maharashtra and Anr. ... Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO.2725 OF 2023

Ashish Virendra Mehta ... Applicant
versus
The State of Maharashtra and Anr. ... Respondents

Mr. Rishi Bhuta with Mr. Ujjwal Gandhi, Ms. Mamta Singh, Ms. Risha Rathod, for Applicant in ABA No.2515 of 2023.

Mr. Siddharth Sharma with Mr. Sandesh Kamble, for Applicant in ABA 2517 of 2023.

Mr. Satyavrat Joshi with Ish Jain and Mr. Kiran Jain, Mr. Vinayak Siruslekar, Ms. Monika Kale i/by Kiran Jain and Co., for Applicant in ABA 2725 of 2023.

Mr. Aniket Nikam with Mr. A.I.Satpute, Mr. Amit Icham, for Applicant in IA 2562 of 2023.

Smt. Ashwini A. Takalkar, APP for State.

Mr. ShanbagPathan, for Intervener in IA 3273 of 2023 and 3292 of 2023.

Mr. Atul Mali, API Dindoshi Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 23 OCTOBER 2023

P.C.

1. Heard the learned Counsel for the parties.
2. These applications for pre-arrest bail are in connection with C.R.No.889 of 2022 registered with Dindoshi Police Station for the offences punishable under Section 420, 465, 467, 406 read with Section 34 of the Indian Penal Code and Sections 13 and 14 of the Maharashtra Ownership of Flats (Regulation of the promotion of construction, Sale, Management and Transfer) Act, 1963.
3. The first informant, his father Shantilal and mother Jayaben had purchased rooms in Munira Manzil, Daftary Road, Malad (East), Mumbai, from their respective vendors. In November 2009, the original owner sold the premises to M/s.

Navkar Leasing and Infrastructure, of which Mr. Paras Jain – Applicant in ABA 2515 of 2023 and Mr. Jaresh Jain @ Parmar – Applicant in ABA 2517 of 2023 were the partners. Mr. Paras Jain and Naresh Jain introduced Mr. Ashish Mehta, Applicant in ABA 2725 of 2023, and Mr. Pranav Mehta, Applicant in ABA 2562 of 2023 as the partners of M/s. Navkar Leasing and Infrastructure. The firm was renamed as M/s. Nine Globe Builders. In lieu of Room Nos.2, 5 and 6 which the first informant, his father and mother were in occupation, the applicants/accused agreed to provide Flat Nos.401, 504 and 404 by executing registered agreements, by 31 August 2015. The first informant and his parents delivered the possession of room Nos.2, 5 and 6 to the applicants on 10 February 2012. The first informant alleged, since the year 2015, the applicants stopped paying the transit rent. Nor possession of the flats was delivered, as promised. Enquires revealed that M/s. Nine Globe Builders had sold the said flats to third parties. Upon being confronted, Mr. Ashish Mehta gave a confirmation letter on 10 August 2018 that Flat Nos.401, 404 and 504 were not sold to third party.

4. During further enquiries, it transpired that the applicants had erected the construction by getting the plan approved from SRA which was at variance with the plan annexed to the registered agreements executed in favour of the first informant and his parents. Thereupon, a notice was served on the applicants and suits also came to be instituted in this Court. It further transpired that the applicants had entered into development agreement and the applicants and the developers had sold more than 60

flats by executing instruments. They had constructed duplex flats and it was not possible to construct the number of flats for which agreements for sale were executed. Hence, the first informant filed a complaint before the Magistrate. Pursuant to the order passed by the learned Magistrate under Section 156(3) of the Code of Criminal Procedure, 1973, FIR came to be registered.

5. The applicants have approached this Court with a case that in respect of the very same project and identical allegations, FIRs were already registered and the post completion of investigation, chargesheet has been filed indicating the complicity of few of the applicants. In respect of self-same allegations, the applicants cannot be deprived of their personal liberty repetitively. In any event, since the first informant and his parents have instituted civil suits and the matter is subjudice, at this stage, the custodial interrogation of the applicants is not warranted.

6. I have heard Mr. Rishi Bhuta, learned Counsel for Applicant in ABA 2515 of 2023, Mr. Siddharth Sharma, learned Counsel for the Applicant in ABA 2517 of 2023, Mr. Satyavrat Joshi, learned Counsel for Applicant in ABA 2725 of 2023, Mr. Aniket Nikam, learned Counsel for the Applicant in ABA 2562 of 2023, Smt. Ashwini Takalkar, APP for State, and Mr. Shahbag Pathan, learned Counsel for the Intervener.

7. Mr. Rishi Bhuta, learned Counsel for the Applicant – Paras Jain, submitted that the applicant had retired from the partnership firm in the year 2012. The applicant was not in the management of the affairs of M/s. Nine Globe

Developers since then. It was submitted that in C.R.No.56 of 2020, post investigation, the applicant was not sent for trial.

8. Mr. Satyavrat Joshi, learned Counsel for the Applicant – Ashish Mehta in ABA 2725 of 2023 submitted that the applicant was arrested in connection with C.R.No.201 of 2021 in respect of the very same project. He was released on bail by the Supreme Court in Criminal Appeal No.140 of 2022. The Applicant was also released on bail in Criminal Case i.e. BA No.778 of 2022 by an order dated 21 March 2022 passed by this Court. In ABA No.623 of 2023 this Court granted pre-arrest bail to the applicant – Ashish and co-accused Pranav Mehta in C.R.No.11764 of 2022. This is the fourth FIR in respect of one and the same project containing the same allegations.

9. Mr. Siddharth Sharma and Mr. Aniket Nikam, learned Counsel appearing for the Applicants in ABA 2517 of 2023 and 2562 of 2023 advanced identical submissions. It was urged that the applicants cannot be made to suffer the prospect of arrest in each of the FIRs which may be lodged by the owners/purchasers of the units in the said project.

10. Smt. Takalkar, learned APP, on the other hand, submitted that the allegations in the instant FIR are distinct. The applicants had carried out construction not in accordance with the plan which was annexed to the registered agreements. The applicants have accepted huge amount from the prospective purchasers who are far in

excess of the flats constructed in the said project. It was further submitted that the applicants would not be in a position to obtain necessary approval for erection of the structures to meet all their contractual obligations. Since the fraud is evident, the applicants do not deserve the exercise of discretion.

11. Mr. Pathan, learned counsel for the Intervener – first informant strenuously urged that the first informant and his parents were induced to deliver the rooms in the year 2012 in the sanguine hope of getting the flats in a redeveloped building. The learned Counsel submitted that the fact that the Applicants Ashish and Naresh were arrested, cannot be urged to insulate the applicants of every prosecution, whatever be the nature of the accusation. Emphasis was laid on the fact that the applicants have executed the registered instruments in favour of the first informant and his parents by annexing the plan, in accordance with which the construction has not been carried out at site. The flats agreed to be sold to the first informant has been transferred to other party. In this view of the matter, the custodial interrogation of the applicants is warranted, urged Mr. Pathan.

12. Whether the allegations in the instant FIR were subject matter of investigation in the FIRs in which the applicants Ashish and Naresh were arrested ? FIR No.56 of 2020 was lodged by Devidas S. Raut with the allegations that he was induced to part with a sum of Rs.73,21,000/- by making a representation that M/s. Nine Globe Developers and Urban One Reality, who were developing the subject

project, would allot Flat No.602-B to him. However, the said flat was subsequently sold to one Dharmendra Mehta.

13. Investigation in the said FIR revealed that the Applicant Naresh had entered into an agreement in respect of Flat Nos.401, 404 and 504 with the occupant of the room/s in Munira Manzil and those flats were not constructed and delivered. In the final report under Section 173 of the Code lodged in C.R.No.56 of 2020, the applicant – Paras Jain was not shown as the accused.

14. In this context, the observations in paragraph Nos.4, 5 and 7 of this Court while granting pre-arrest bail to Applicants Ashish and Pranav in ABA No.623 of 2023 dated 8 March 2023, in connection with C.R.No.1174 of 2022 registered with Dindoshi Police Station for the offences punishable under Sections 405, 406, 415, 418, 420 read with 34 of IPC are material and, hence, extracted below :

“4. The records reveal that the Honourable Supreme Court had granted bail to the applicants in Crime No.201 of 2021 on similar set of allegation. Furthermore, this Court by order dated 21 March 2021 has also released the applicants on bail in Crime No.56 of 2020. The records reveal that complainant Jayantilal Shah is also a witness in Crime No.56 of 2020 and his statement has been recorded in the said crime. It is on record that the complainant in Crime No.201 of 2021 had filed an application before the Honourable Supreme Court for cancellation of bail, which came to be dismissed on 5th August 2022. Subsequent to the dismissal of the said application, these two Crime No.889 of 2022 as well as 1174 of 2022 have been registered pursuant to the order passed by the learned Magistrate under Section 156(3) of the Cr.P.C.

5. The records prima facie indicate that several flat purchasers have made

allegations against applicant Ashish Mehta for having cheated them. Separate crimes have been registered at the behest of the purchasers as well as the tenants who had agreed to purchase the flats in the same project on similar set of allegations. The applicants have been granted bail in crime No.56 of 2020 and 201 of 2021 and that they are on interim bail in Crime No.889 of 2022 pending before the learned Sessions Court, Dondoshi.

7. As regards applicant Virendra, he is father of applicants Ashish and Pranav Mehta. There is no prima facie material on record to indicate that he was in any manner involved in the construction of the project. Similarly, records reveal that the applicant Pranav Mehta had also retired from the partnership firm on 14 February 2019. Even otherwise, he has been granted bail in Crime No.56 of 2020, wherein as stated earlier the complainant herein is a witness. Suffice it to say that the object of bail is not punitive but to secure the appearance at trial. In the instant case, the applicants have already been interrogated in other crimes. There is no possibility of the applicants absconding or thwarting the course of justice.....”

15. The situation which thus, prima facie, appears that in respect of the very same project, multiple FIRs have been registered. Two of the applicants Ashish and Naresh were arrested and have since been released. After the release of those applicants in C.R.No.56 of 2020 and 201 of 2021, it seems two more FIRs have been registered being C.R.No.1174 of 2022 and 889 of 2022. The final report in C.R.No.56 of 2020 makes a reference to the subject flats, in respect of which the first informant claims the applicants had defrauded him. Though an endeavour was made on behalf of the prosecution and the learned Counsel for the first informant that the allegations in the FIR are distinct, I am unable to persuade myself to agree with the said

submissions as the substratum of the indictment against the applicants remains the same.

16. Allegedly, the applicants constructed a building in deviation of the plan annexed to the registered agreements, entered into agreements with the prospective purchasers far in excess of the units available in the said building and executed instruments in favour of the third parties, despite having executed the agreements earlier in favour of the sitting occupants/tenants or the prospective purchasers.

17. A useful reference in this context can be made to the observations of the Supreme Court in the case of **T.T.Antony V/s. State of Kerala and Ors.**¹ wherein it was enunciated that there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. The observations in paragraph 20 and 27 are material and hence, extracted below :

“20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a

1 (2001) 6 SCC 181

cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 [173](#) of the Cr.P.C.....

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution."

19. In the case at hand, the fact that the Applicants Ashish and Naresh Jain

were arrested and thoroughly investigated also renders the case for further custodial interrogation unwarranted. The investigating agency has carried out investigation in two FIR Nos.56 of 2020 and 201 of 2021 in respect of the same project and substantially identical allegations. I am, therefore, persuaded to accede to the submission on behalf of the applicants that further custodial interrogation is not warranted. The applicants appear to have roots in society. The possibility of fleeing away from justice also appears to be remote. I am, therefore, inclined to exercise the discretion in favour of the applicants.

20. Hence, the following order :

ORDER

(i) In the event of the arrest of the Applicants – Paras Tarachand Jain, Naresh Chunilal Jain, Pranav Virendra Mehta and Ashish Virendra Mehta, in connection with C.R.No.889 of 2022 registered with Dindoshi Police Station, they be released on bail on furnishing a PR bond in the sum of Rs.30,000/- each with one or two sureties in the like amount.

(ii) The Applicants shall co-operate with the investigation and report to Dindoshi Police Station on 1st, 2nd and 3rd November 2023 in between 10.00 a.m. to 1.00 p.m. and, thereafter, as and when directed by the Investigating Officer.

(iii) The Applicants shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses and the persons

acquainted with the facts of the case.

(iv) The Applicants shall regularly attend the proceedings before the jurisdictional Court.

(v) The Applications stand disposed.

(vi) In view of the disposal of the Applications, Interim Applications also stand disposed.

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

(N.J.JAMADAR, J.)