



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2758 OF 2023**

Stalin Joseph Rodrigues	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. A.V.Chatuphale with Mr. R.K.Carreira, for Applicant.
Smt. Ashwini A. Takalkar, APP for State.
Mr. Manish Wankhade, API, EOW Mira Bhayander, present.

CORAM: N.J.JAMADAR, J.

DATE : 4 OCTOBER 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with C.R.No.195 of 2023 registered with Arnala Police Station, now transferred to EOW, Mira Bhayander, for the offences punishable under Sections 120B, 406, 420 read with Section 34 of the Indian Penal Code.
3. The first informant lodged a report with the allegations that he had entered into a development agreement with M/s.Kapcon Ventures, of which Rahul Kapadia and Mamta Mali are the partners, to develop a land situated at Agashi. M/s. Kapcon Ventures could not develop the property as promised. The first informant contributed substantial amount for the development of the property in consideration for the land and the amount invested by the first informant for the development of the

project, M/s. Kapcon Ventures agreed to transfer number of flats in the said building, including a Flat No.801. In breach of the said agreement and with a view to deceive the first informant, Rahul Kapadia and Mamta Mali, partners of M/s. Kapcon Ventures and Mr. A.J.Rodrigues, the Power of Attorney holder, have transferred the flats in favour of the third parties and Flat No.801 came to be transferred in the name of the applicant.

4. The learned Counsel for the Applicant submitted that the applicant is a bonafide purchaser for value of Flat No.801 from M/s. Kapcon Ventures. In fact, it transpired that the said firm had already transferred the said flat in favour of another person Aniket Wadivkar before executing the instrument in favour of the applicant. Therefore, in fact, the applicant is a victim of the fraud practiced by the partners of M/s. Kapcon.

5. The learned APP, on the other hand, submitted that the investigation has revealed that the applicant has acted as an agent. The payments which the applicant claimed to have made and which find reference in the registered instrument have not gone to the account of M/s. Kapcon Ventures. As number of persons have been duped, offences punishable under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 have been invoked.

6. From the perusal of the allegations in the FIR, it becomes evident that

the role of deceiving the first informant is primarily attributed to the partners of M/s. Kapcon Ventures. The Applicant appears to have purchased Flat No.801 by a registered instrument. Prima facie, consideration was transferred through banking channel.

7. The learned Counsel for the Applicant invited the attention of the Court to an order passed in ABA No.983 of 2023 by the learned Additional Sessions Judge, whereby Rahul Kapadia, partner of M/s. Kapcon Ventures, has been granted pre-arrest bail.

8. In view of the above, the custodial interrogation of the applicant does not seem to be warranted. The allegations as regards the involvement of the applicant in the alleged offences, apart from being one of the purchasers of the flat which was earmarked for being allotted to the first informant, can be investigated by the Investigating Officer if the applicant is ordered to co-operate with the investigation and appear before the Investigating Officer. I am, therefore, persuaded to exercise the discretion in favour of the applicant.

9. Hence, the following order :

ORDER

(i) In the event of the arrest of the Applicant – Stalin Joseph Rodrigues in connection with C.R.No.195 of 2023 registered with EOW Mira Bhayander Police Station, the Applicant be released on bail on furnishing a PR bond in

the sum of Rs.30,000/- with one or two sureties in the like amount.

(ii) The Applicant shall co-operate with the investigation and report to EOW, Mira Bhayander Police Station on 11th, 12th, 13th and 16th October 2023 in between 10.00 a.m. to 1.00 p.m. and, thereafter, as and when directed by the Investigating Officer.

(iii) The Applicant 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 Applicant shall regularly attend the proceedings before the jurisdictional Court.

(v) The Application stands disposed.

(N.J.JAMADAR, J.)