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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2525 OF 2019

Kirti Shah @ Kirti Gada And Anr.

...Applicants

vs.

The State of Maharashtra

...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.2503 OF 2019

Amit Balkrishna Jalan

...Applicant

vs.

Senior Inspector of Police, EOW,
Crime Branch, Mumbai And Anr.

...Respondents

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Mr. Ashish Raghuvanshi, for the Applicants in ABA/2525/2019.

Mr. Sudeep Pasbola, a/w. Mr. Jugal Kanani and Mr. Shailesh Kharat, i/b.
Pravina Kanani, for the Applicant in ABA/2503/2019.

Mr. Niranjana Mundargi, for the Intervenor.

Mr. S.V. Gavand, APP, for the Respondent State.

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CORAM : ANUJA PRABHUDESSAI, J.

DATE : 27 APRIL 2023

P.C. :

The Applicants apprehend their arrest in Crime No.99 of 2018 registered with EOW, Crime Branch, Mumbai for offences punishable under Sections 406, 409, 420 r/w 34 of the I.P.C.

2. Heard learned Counsel for the Applicants, learned APP for the State and learned Counsel for the Intervenor. I have perused the records and considered the submissions advanced by learned Counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by Mansukh Harakhchand Shah. It is the case of the First Informant that Devji Bera and his son Raunak Bera (accused nos. 1 and 2) had induced him to invest money in proposed Shopping Mall known as “Ramdev Plaza” at Khotwadi. Accused nos. 1 and 2 assured that they would get sole selling rights on payment of Rs. 6,25,00,000/-. They also assured that he would get double the amount within two years. The First Informant was also assured that 20 shops would be allotted to him towards the security of the money paid. Accordingly, the First Informant invested an amount of Rs.5,25,00,000/- in the project, which was to be constructed by the Applicant in ABA No. 2503 of 2019. It is stated that Devji Bera and his son failed to return the money and failed to allot the shops, as assured. The First Informant, therefore, lodged FIR against said Devji Bera and his son as well as the builder, the Applicant in ABA No.2503 of 2019. It was subsequently found that part of the money, which was paid to Devji Bera and his son, was credited in the account of the Applicants in ABA No.2525 of 2019. Hence, the Applicants in the said application also came to be arraigned as accused in the said crime.

4. The records reveal that the First Informant has settled the dispute amicably with Devji Bera and his son Raunak and, accordingly, entered into a memorandum of understanding dated 18 September 2021. In view of the settlement between the parties, ABA No.2491 of 2019 filed by Devji Bera and others was allowed by this Court by order dated 30 October 2021. The Applicants in ABA No.2525 of 2019 had received money through Devji Bera and his son, original accused nos. 1 and 2, with whom the First informant had already settled the dispute amicably. In view of the settlement of the dispute with Devji Bera and Raunak Bera, the Applicant in ABA No.2503 of 2019 would also be entitled for bail.

5. Mr. Pasbola, learned Counsel for the Applicant in ABA No.2503 of 2019, has placed on record MOU dated 25 April 2021 between the First Informant and the Applicant in ABA No. 2503 of 2019. A perusal of the said MOU reveals that the First Informant and the Applicant in this application have settled the dispute amicably. Mr. Pasbola, learned Counsel for the Applicant, under instructions, makes a statement that the Applicant shall abide by the terms and conditions recorded in the MOU dated 25 April 2021. Since the dispute essentially is in respect of a commercial transaction and the parties have settled the same amicably, in my considered view, this would be a fit case to exercise discretion under Section 438 of Cr.P.C.

6. Hence, the applications are allowed on the following terms and conditions:

- (i) In the event of arrest of the Applicants in C.R. No.99 of 2018 registered with EOW, Crime Branch, Mumbai, the Applicants shall be released on bail on furnishing PR bonds in the sum of Rs.25,000/- each with one or two sureties to the like amount;
- (ii) The Applicants are directed to report to the Investigating Officer as and when called by the Investigating Officer and shall co-operate with the investigation;
- (iii) The Applicants shall not tamper with the prosecution evidence and or influence the witnesses in any manner;
- (iv) The Applicants shall keep the Investigating Officer informed of their current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

7. The applications stand disposed of.

(ANUJA PRABHUDESSAI, J.)