



Diksha Rane

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2408/2023

ASHOK RAJARAM GUPTA ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
INTERIM APPLICATION NO.4369/2023
IN
BAIL APPLICATION NO.2408/2023**

SMITA NARAYAN PAWAR ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
INTERIM APPLICATION NO.4296/2023
IN
BAIL APPLICATION NO.2408/2023**

SURENDRA THORVE AND ORS ..APPLICANTS
VS.
THE STATE OF MAHARASHTRA AND ANR ..RESPONDENTS

**WITH
INTERIM APPLICATION NO.4158/2023
IN
BAIL APPLICATION NO.2408/2023**

VIJAY PANDURANG PAWAR ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Senior Counsel Rajiv Patil a/w. Adv. Vishal Kolekar, Adv. Shubham Kadam, Adv. Harsharaj Jagtap, Adv. Kiran Jadhav i/b. Adv. Randhir Kale for the applicant.
Mr. P. H. Gaikwad, APP for the State.
Adv. Swapana Kode a/w. Adv. Megha Pathak for the

intervener in IA/4296/2023 & IA/4158/2023.

Adv. Namrata Agashe for the intervener in IA/4369/2023.

PSI A. S. Jadhav, Ghatkopar Police Station, Mumbai.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 18, 2023.

P.C. :

- 1.** Heard learned counsel for the applicant, learned APP for the State and learned counsel for the interveners.
- 2.** This is an application for bail in respect of the offence punishable under Sections 420, 406 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 3, 4 and 5 of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereafter 'the MOFA' for short) registered on 14/8/2018 vide C.R. No.498/2018 with Ghatkopar Police Station, Mumbai.
- 3.** The applicant is a developer. The applicant was developing the SRA project. The victims are the slum dwellers and not so affluent persons according to the interveners.
- 4.** Learned counsel for the interveners in Interim

Application No.4369/2023 submitted that the victims are poor slum dwellers who have been cheated by the developer. It is submitted that the victims had paid their hard earned money to the developer, however, with an intention to cheat the poor slum dwellers, the applicant abandoned the project and absconded. The amount which the victims have invested is to the tune of Rs. 7,14,00,000/-. It is further submitted that some more victims are still coming forward and registering cases against the applicant. It is one of the contention of the interveners that the applicant has breached the undertaking given to the Supreme Court in the anticipatory bail application. It is submitted that instead of complying with the undertaking, the applicant absconded.

5. Learned senior advocate for the applicant submitted that an amount of Rs.65 lakhs was deposited in this Court. He has no objection for the said amount being transferred by Registry to the trial Court. Statement accepted, the office to act. The deposit shall abide by further orders of the trial Court. The amount be invested in a Nationalized Bank.

6. My attention is invited to the communication dated

10/12/2021 at page 822 of the paper-book wherein it is reflected that the amounts which have been received by the developer towards the five sale components was utilized for the project. There is also a valuation report of B. N. Ravindra about valuation of expenses incurred by the earlier developer (applicant) to the tune of Rs.11,03,58,746/-. Apart from this, I find that Real Estate Regulatory Authority, Mumbai, has protected the interest of the stakeholders and in the final order dated 27/8/2021 it has been observed thus:-

“In view of the observations hereinabove, the registration of the said Project registration No.P51800010062 is revoked and cancelled and the following directions are issued in this regard:

a. The new Developer (Promoter) as appointed by Society and confirmed by SRA shall apply for the said Project registration within a period of 30 days from the date of this order;

b. The new Developer (Promoter) shall protect and safeguard the bonafide rights of the said Society and new apartments Purchasers (Allotees) in the said Project and the same shall remain unaltered upon the change of project registration number of the said Project. Thus, the new Developer (Promoter) shall not affect the bonafide allotment or sale of the apartments, plots or buildings as the case may be, in the said Project made by the Respondent herein. Needless to say, that the all the Orders passed by the erstwhile Authority in the complaints in the said Project shall be adhered to in toto.”

7. I have also heard learned APP who has filed an affidavit-in-reply opposing the application for bail.

8. The applicant was arrested on 19/11/2022 and now is in custody for more than one year and one month. The maximum punishment for the offence invoked is 7 years rigorous imprisonment. The trial will take a long time to conclude. The applicant cannot be kept indefinitely incarcerated for a long period as an under-trial. The applicant will undoubtedly face the consequences post trial if the charges against him are proved. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. The investors are protected, as the SRA is taking steps to appoint a new developer as reflected from the order of RERA reproduced hereinbefore.

9. For the breach of the undertaking in the anticipatory bail application, the applicant has suffered the consequence of rejection of the anticipatory bail application and custody thereafter. Now that I am considering the present bail application, in the facts and circumstances of the present case, it will have to be ensured that the applicant does not evade the trial. The applicant cannot be kept in custody as a pre-trial punishment. I propose to enlarge the applicant on

bail by imposing stringent conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Ashok Rajaram Gupta in connection with C.R. No.498/2018 registered with Ghatkopar Police Station, Mumbai, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Ghatkopar police station, twice a month on the 1st and 3rd Sunday of every month between 11.00 am and 1.00 p.m. commencing from January 2024.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.
- (f) The applicant shall attend the trial regularly. The

applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(g) The applicant shall not leave the country without prior permission of the trial Court.

(h) The applicant shall surrender his passport, if any, to the investigating officer if not already surrendered.

(i) If it is found that the applicant has breached any of the conditions, that may be a ground for the prosecution and/or the investors to apply for cancellation of this bail.

(j) Needless to mention that the SRA is seized of the project and appropriate steps will obviously be taken to safeguard the interest of the investors.

10. The application is disposed of.

11. The interim applications are also disposed of.

(M. S. KARNIK, J.)