

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

ANTICIPATORY BAIL APPLICATION NO. 480 OF 2023

**NEETA
SHAILESH
SAWANT**

Bharat Madhukar Dixit } ***..Applicant***

: *Versus* :

The State of Maharashtra } ***..Respondent***

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NEETA SHAILESH
SAWANT
Date: 2024.04.25
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**WITH
ANTICIPATORY BAIL APPLICATION NO. 481 OF 2023**

Rajendra Gulabchand Bhaga } ***..Applicant***

: *Versus* :

The State of Maharashtra } ***..Respondent***

**WITH
ANTICIPATORY BAIL APPLICATION NO. 845 OF 2023**

Girish Gupta H.S. } ***..Applicant***

: *Versus* :

The State of Maharashtra } ***..Respondent***

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1940 OF 2021**

Snehal Sushil Mantri } *..Applicant*

: Versus :

The State of Maharashtra } *..Respondent*

**WITH
INTERIM APPLICATION NO. 2076 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 1940 OF 2021**

Mohamadh Afsal Ansari } *..Applicant*

IN THE MATTER BETWEEN :

Snehal Sushil Mantri } *..Applicant*

: Versus :

The State of Maharashtra } *..Respondent*

**WITH
INTERIM APPLICATION NO. 2163 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 1940 OF 2021**

Utsav Dutta & Anr. } *..Applicants*

IN THE MATTER BETWEEN :

Snehal Sushil Mantri } ..Applicant

: Versus :

The State of Maharashtra } ..Respondent

**WITH
INTERIM APPLICATION NO. 2347 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 1940 OF 2021**

Rishi Kumar Tiwari & Ors. } ..Applicants

IN THE MATTER BETWEEN :

Snehal Sushil Mantri } ..Applicant

: Versus :

The State of Maharashtra } ..Respondent

**WITH
INTERIM APPLICATION NO. 2162 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 1940 OF 2021**

Sanal Kumar Sonasundaran & Ors. } ..Applicants

IN THE MATTER BETWEEN :

Snehal Sushil Mantri } ..Applicant

: Versus :

The State of Maharashtra } ..Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2077 OF 2021**

Sushil Pandurang Mantri } ..Applicant

: Versus :

The State of Maharashtra } ..Respondent

**WITH
INTERIM APPLICATION NO. 206 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 2077 OF 2021**

Utsav Dutta & Anr. } ...Applicants

IN THE MATTER BETWEEN :

Sushil Pandurang Mantri } ..Applicant

: Versus :

The State of Maharashtra } ..Respondent

Mr. Mithilesh Mishra, for the Applicant in all Anticipatory Bail Applications.

Mr. Satish Sharma i/by. Mr. Vijay Upadhyay, for the Proposed Intervenor,
Kappa Developers LLP.

Mr. Ketan Joshi i/by. Mr. Siddharth Karpe, Mr. Vishwajeet Mohite, for the
Applicants/intervenors in IA-2076/2021 and IA-2347/2023.

Mr. Vikas Shivarkar for the Intervenor in IA-1409/2024.

Mr. A.S. Gawai, APP for State.

CORAM : SANDEEP V. MARNE, J.

Dated : 25 April 2024.

P.C. :

1) These applications are filed seeking pre-arrest bail in connection with C.R. No.42/2021 registered under Section 406, 420 read with Section 34 of the Indian Penal Code and under Sections 3, 5, 8 and 13 of the Maharashtra Ownership of Flats Act (**MOFA**).

2) When the applications came up before this Court on 4 April 2024, this Court expressed disinclination to allow the applications and passed the following order :

1 By these Applications the Applicants seek pre-arrest bail in connection with C.R. No.42 of 2021 registered under sections 406, 420 and read with section 34 of the Indian Penal Code (IPC) and under sections 3, 5, 8 and 13 of the Maharashtra Ownership of Flats Act (MOFA). When the Anticipatory Bail Application No.1940 of 2021 filed by Ms. Snehal Sushil Mantri came up before this Court on 26 August 2021, this Court was informed that M/s. Mantri Developers Private Limited was in the process of arranging funds through Special Window for Affordable & Mid-Income Housing (SWAMIH). An assurance was given to this Court that a progress would be made for completing the construction by procuring funds through SWAMIH. On that count this Court granted interim protection in Anticipatory Bail Application No.1940 of 2021 on 26 August 2021.

2 However it appears that the Developer was unable to procure funds in that scheme and no progress is made for completion of the project. Alternatively a Memorandum of Understanding (MoU) dated 25 March 2022 was executed between the Developer and M/s. Kappa Developers LLP which is a sister concern of M/s. Goyal Ganga Developments for transfer of the project to M/s. Kappa

Developers LLP. It is the contention of the Applicants that out of total 123 flat purchasers, 103 flat purchasers have consented for transfer of the project to M/s. Kappa Developers LLP. Reliance is placed on email of MahaRERA by which the proposal for change of Promoter as M/s. Kappa Developers LLP was approved by MahaRERA on 29 April 2022.

3 While the learned counsel appearing for the Applicants was attempting to assure this Court that the new Promoter M/s. Kappa Developers LLP would now take over the project and complete the same, my attention is invited to Interim Application No.1409 of 2024 filed by one of the Intervenor alongwith which, a copy of Plaint in Special Civil Suit No.733 of 2023 filed by M/s. Kappa Developers LLP against Shore Dwellings Private Limited and others is brought on record. The suit appears to have been filed by M/s. Kappa Developers LLP seeking specific performance of the Memorandum of Understandings (MoUs) dated 16 December 2021. It appears an injunction is sought against Shore Dwellings Private Limited, inter alia from causing any construction at the site. The suit appears to have been lodged on 12 April 2023. However in the Affidavit filed by Mr. Sushil Pandurang Mantri on 28 August 2023, solemn statements are made that the project is now transferred to M/s. Kappa Developers LLP who would execute the sale. In the Affidavit filed on 28 August 2023 by Mr. Sushil Pandurang Mantri, there is no reference to filing of Special Civil Suit No.733 of 2023 which was apparently lodged 12 April 2023. The learned counsel appearing for the Applicants is quick enough to respond that as on the date of filing of Affidavit dated 28 August 2023 Mr. Sushil Pandurang Mantri was not even aware of filing of the suit as the appearance in the suit by the Defendants therein was apparently made in November 2023.

4 Upon being inquired as to why the suit is filed and whether there are strained relationship between Shore Dwellings Private Limited and M/s. Kappa Developers LLP, the learned counsel appearing for the Applicants has no instructions. He also seeks time to check the current position about the progress made by M/s. Kappa Developers LLP for completion of the project. In fact one of the Intervenor has invited my attention to the latest photographs at the site which

indicate that M/s. Kappa Developers LLP has apparently not taken any steps for progressing the construction at site. In my view prima facie, the Affidavit filed by Mr. Sushil Pandurang Mantri on 28 August 2023 about M/s. Kappa Developers LLP taking over the project and completing the same does not inspire confidence and apparently filing of the suit by M/s. Kappa Developers LLP against Shore Dwellings Private Limited prima facie indicates strained relationship between the parties. Since complete and correct factual position is not put before this Court and since the Applications are kept pending for considerable period of time after grant of interim protection, this Court was inclined to reject the Applications. However by way of last chance, the learned counsel appearing for the Applicants seeks time to apprise the Court about the latest position in the case. By way of last chance, hearing of the Applications is deferred till 18 April 2024, to be listed high on board. It is made clear that no further time shall be granted to the Applicants. Interim protection granted earlier to continue till the next date of hearing.

3) When the applications were listed on 18 April 2024, it was informed to the Court that M/s. Kappa Developers LLP (***Kappa Developers***) is taking over the Project and that the Applicants were ensuring the suit filed by *Kappa Developers* would be withdrawn. On this count, time was sought on 18 April 2024 for filing Affidavit.

4) Today, Affidavit/undertaking of Mr. Sushil Pandurang Mantri executed on 24 April 2024 is tendered. Paras-8 to 12 of the Affidavit-cum-Undertaking read thus :

8. That, pending the Anticipatory bail application, M/s. Shore Dwellings Pvt. Ltd., has entered into a Memorandum of Understanding (MOU) with Kappa Developers LLP (a sister concern of M/s. Goel Ganga Developments) which is a Limited Liability Partnership firm incorporated on 10th September 2018, in order to complete the residential project named "Mantri Vantage". That, M / s

Shore Dwellings Pvt. Ltd., in consonance with the at purchasers decided to hand over the entire project to M/s. Goel Ganga Developments.

9. Further, consent of 103 (83.73%) flat purchasers have been obtained for transfer of project to Kappa Developers LLP. Further, M/s. Shore Dwellings has applied to the MahaRERA for change of Promoter along with consent letters of log flat purchasers and the same has been approved by MahaRERA vide approval dt. 29.04.2022.

10. Considering delays happening from Kappa Developers in moving forward for one or other reasons, we are coming forward with an alternative proposal as under.

11. I undertake before this Hon'ble Court that the project shall be concluded for the present flat purchasers within a period of four years from the revised plan approvals.

12. Further, I understand and acknowledge the fact that there has been delay on our part to conclude the project and handover possession of the flats to the flat purchasers and in view thereof, I undertake to repay, the flat purchasers who wish to walk out of the project, the amount paid by them along with 6% interest per annum, within a period of six months from the execution and acceptance of this undertaking before this Hon'ble Court. That whatever stated in foregoing paragraphs is true and correct to best of my knowledge.

5) Thus, from the contents of the Affidavit of Undertaking, it appears that Shore Dwellings Private Limited (***Shore Dwellings***) does not desire that the project should be executed by *Kappa Developers* and that *Shore Dwellings* is now desirous of completing the project on its own.

6) Perusal of various orders passed in the present applications by this court would indicate that interim protection was granted in favour of the Applicants initially on a representation that funds were being procured from

Special Window for Affordable & Mid-Income Housing (**SWAMIH**). However, subsequently it transpired that the funds could not be procured through **SWAMIH** and this Court was shown Memorandum of Understanding dated 25 March 2022 executed between *Shore Dwellings* and *Kappa Developers*. Thereafter, attempts were made to continue the interim protection by the Applicants by representing before this Court that now *Kappa Developers* would complete the Project. My attention was also invited during the course of previous hearings that, out of total 123 flat purchasers, 103 flat purchasers have consented for transfer of the Project to *Kappa Developers* and reliance was placed on email of MahaRERA by which MahaRERA has accepted the proposal for change of Promoter as *Kappa Developers* in respect of the Project concerned. While these representations were being made about *Kappa Developers* taking over the project, doubts about transaction between *Shore Dwellings* and *Kappa Developers* surfaced only when intervenors pointed out to this Court that some litigation was initiated by *Kappa Developers* against *Shore Dwellings*. Therefore, time was sought by the learned counsel appearing for the Applicants to check the position about pendency of the suit between *Kappa Developers* and *Shore Dwellings*. It was then assured to this Court that efforts would be made so that suit filed by *Kappa Developers* was withdrawn and that *Kappa Developers* carries forward the development. On these counts, adjournment was sought and interim protection was extended. Today, it has transpired that *Shore Dwellings* is not desirous of getting the Project executed through *Kappa Developers*. All the representations made to this Court during previous hearings have thus turned out to be false. As observed above, Applicants had initially not disclosed the

factum of filing suit by *Kappa Developers* and the said fact was brought on record by the Intervenor.

7) Though a vague promise is sought to be given in para-11 of the Affidavit of Undertaking that *Shore Dwellings* will complete the project within a period of four years from the date of revised plan approvals, it is highly doubtful whether the Applicants would be in a position to fulfill the said Undertaking. It has now been almost three long years since Applicants initially are represented before this Court that the Project would be completed through various agencies. Every time different agency/entity is projected for representing before this Court that the Project would be completed. However, today a solemn statement is made before this Court that *Shore Dwellings* would complete the project on its own. In my view, this Court is being taken for a ride by the Applicants by giving false assurances about completion of the Project through different agencies/entities. On 4 April 2024 itself, this Court had made it clear that interim protection granted in favour of the Applicants is required to be revoked considering their conduct. In view of the Affidavit of Undertaking tendered today, I have no doubt in my mind that interim protection granted in favour of the Applicants deserves to be vacated. While this Court is not expected to ensure that the Project is completed and the duped house buyers receive their flats in these Anticipatory Bail Applications, at the same time, it must be borne in mind that the only reason which weighed with this Court while granting interim protection to Applicants on 26 August 2021 was the assurance given to this

Court that funds were being procured through SWAMIH. In this regard, the order passed by this Court on 26 August 2021 is as under :

1. Learned counsel Mr.Mundargi appearing for the applicant, at the outset, make a statement that without going into the contested issue as to whether the present applicant is involved in the scheme, which is floated by 'Shore Dwellings Pvt. Ltd.' a sister concern of 'M/s Mantri Developers Pvt.Ltd.' in which, she was once upon a time, appointed as head of Human Resources Development, but now resigned, has placed on record a proposal received in the name of Mr.Sushil Mantri of 'M/s Mantri Developers Pvt. Ltd.' from the Special Window for Affordable & Mid-Income Housing (SWAMIH) Investment Funds floated by the Central Government with a objective to complete the construction of stalled, RERA-registered affordable and mid-income category housing projects which are stuck due to paucity of funds.

Mr. Mundargi fairly admits that the amounts were accepted by the 'Shore Dwellings Pvt. Ltd.' for a housing project whereby 400 flats were to be constructed in Khardi Pune in a project captioned as "Mantri Vantage". For certain unavoidable circumstances, the project got stalled, but the letter received by 'M/s Mantri Developers Pvt. Ltd.' from SWAMIH Investment Funds give a ray of hope and the applicant is harping on the same for completion of the project. The proposal which is received on 01/06/2021 is accompanied with several terms and conditions and it is informed by Mr.Mundargi that viability of a particular project being taken over by SWAMIH Investment Funds is being considered. When inquired as to what is the progress of the said proposal from 01/06/2021, Mr.Mundargi states that appropriate steps are being taken, but he is unable to divulge the same at this stage. However, he is ready and willing to share the contact number of a person belonging to the SWAMIH Investment Funds, who is monitoring and supervising the viability and the learned APP can then ascertain about the statement made by Mr.Mundargi.

2. It is equally true that the intervenors, who are before this Court are waiting for their 'Home' to be finished since 2014 and they cannot be asked to wait indefinitely. It is also informed that some of the flat purchasers have approached the MAHARERA authority, Pune and even orders have been passed in their favour for exercise of their option and seeking the amount back with the prescribed interest. The said orders are staring in their face since 2014, but nothing has changed. In any case, merely arresting the applicant at this stage, if some via media is being worked out, is not the only solution. Nonetheless, prima facie, it can be seen that the allegations under Sections 406 and 420 read with Section 34 of IPC alongwith relevant provisions of MOFA Act are made out, but this itself is no ground for arresting the applicant if the applicant is able to take forward their project in which the investors are promised dwelling houses and if such positive step can satisfy the investors, arrest can be postponed for the time being.

Learned APP to seek necessary instructions.

3. Re-notify for 06/09/2021.

8) Now that all representations made to this Court about completion of Project have turned out to be false, I am of the view that the police can be permitted to investigate the role of the Applicants in the alleged crime.

9) The learned APP would submit that Applicants have collected huge amounts from flat purchasers and the trail of the funds is required to be investigated. That the Applicants have not co-operated with the police for investigations into the crime.

10) Considering the above position, I am of the view that custodial interrogation of the Applicants would be necessary so as to enable the Investigating Officer to complete the investigations. In that view of the matter, all the Anticipatory Bail Applications are rejected. All the Interim Application stands disposed of.

11) After the Order is pronounced, the learned counsel appearing for the Applicants seeks extension of interim protection by a period of one week. The request is opposed by the learned counsel appearing for the Intervenors. Considering the fact that the interim protection is operating in favour of the Applicants for a period of over 2 years, the same is extended by a period of one week from today.

[SANDEEP V. MARNE, J.]