

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

ANTICIPATORY BAIL APPLICATION NO.712 OF 2024

Ashok Chatumal Gacheria Applicant
Versus
The State of Maharashtra & Anr. Respondents

Mr. Arun R. Atwal, Advocate for the Applicant.
Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 13th MARCH, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.1185/2023 registered at Santacruz Police Station, Mumbai under sections 406 and 420 of IPC.

2. Heard Mr. Arun Atwal, learned counsel for the Applicant and Ms. Mahalakshmi Ganapathy, learned APP for the Respondent-State.

3. The FIR is lodged by one Prashant Bhat. He has stated that in the year 2014 his father Mahendra Bhat had booked a flat in the project "O-2" then developed by

Snehanjali & S.B. Developers at Sion, Chuna Bhatti. He had booked Flat No.A-1104. For that purpose, the informant's father had paid Rs.1,00,98,110/-. The developers had given an allotment letter dated 11.11.2014. The FIR mentions that three companies, namely, Snehanjali, S.B. Developers and Bhalchandra Trading Private Limited were all sister concerns and they had common Directors. Initially on 14.5.2014, M/s. S.B. Developers had given allotment letter to the informant's father for Flat No.1104. The informant's father had paid Rs.72,59,000/- at that point. On 11.11.2014 he was given an allotment letter through M/s. Bhalchandra Trading Pvt. Ltd.. The S.B. Developers had given an NOC to Bhalchandra Trading Private Limited on 14.5.2014. After all these letters, the informant's father was given the aforementioned allotment letter dated 11.11.2014. The informant's father pursued the matter with the developers. In 2017, he was told by the developers that said Flat No.1104 could not be allotted to him but instead of that he could purchase Flat No.1102, but, for that he would be required to pay additional amount.

Accordingly the informant's father paid Rs.4,05,080/- to M/s. Snehanjali & S.B. Developers. They had issued a receipt dated 23.6.2017. Thus, the informant's father had paid Rs.1,13,29,580/-. The informant's father passed away on 11.7.2018. The informant had to pursue the matter to get possession of the flat. It is mentioned in the FIR that Snehanjali & S.B. Developers Private Limited Company were taken over by Hive Carbon Zero Developers on 1.10.2019. The FIR mentions that the Directors of Hive Carbon Zero Developers are Jia Bai, Yapherd Wang, Chandrahaas Kotiyan, Liyag Kshaan, Jagdish Ahuja and the present Applicant. According to the first informant, all of them were aware of the previous transactions of M/s. Snehanjali & S.B. Developers. In spite of that, the same Flat No.1102, which was booked by the informant's father by making the entire payment, was sold to one Ramprasad Gupta on 19.4.2021. Therefore, according to the first informant it was a case of cheating and criminal breach of trust. Accordingly the FIR was lodged.

4. Learned counsel for the Applicant submitted that he was never a director of M/s. Snehanjali & S.B. Developers. The transaction was from the year 2014 when money was paid. There are two separate companies by the name 'Snehanjali' and the other company is 'Snehanjali & S.B. Developers'. He submitted that because of the common name "Snehanjali" the confusion is created. The Applicant was never a Director of Snehanjali & S.B. Developers. The money was paid to that particular company.

5. Learned counsel submitted that the FIR does not spell out specific role against the present Applicant. He has not misappropriated any amount. He has not signed any allotment letter. He was not concerned with the transaction between the seller companies and the informant's father.

6. Learned APP produced the investigation papers before me. Flat No.1102 was sold to Ramprasad Gupta by M/s. Snehanjali and S.B. Developers Private Limited. Learned APP, on instructions, accepted that 'Snehanjali' is a different company and 'Snehanjali & S.B. Developers Private Limited' is

a different company. The transaction of sale was entered into by 'Snehanjali & S.B. Developers' of which the Applicant was not a director. She submitted that if the Applicant is protected by the order under Section 438 of Cr.P.C., he be directed to attend the police station and cooperate with the investigation.

7. I have considered these submissions. At this stage, there is nothing to show that the Applicant had any connection with the transaction entered into by the informant's father and the developers. The Applicant was not concerned with any representation made by the developers and for accepting money. The investigation has not shown his involvement. The allotment letters were given by M/s. Bhalchandra Trading Private Limited of which the Applicant became Director in the year 2019, according to learned counsel for the Applicant. Therefore, when the allotment letter was given, he was not a Director of the said Bhalchandra Trading Private Limited. Similarly when the same flat was sold to Mr. Gupta, he was not a Director of the seller company.

8. Therefore, at this stage, there is substance in the submissions of learned counsel for the Applicant that he is not involved with the transaction between the developer and the informant's father. In this view of the matter, he can be protected under Section 438 of Cr.P.C. with directions to cooperate with the investigation.

9. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.1185/2023 registered at Santacruz Police Station, Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall attend the concerned police station from 26.3.2024 to 29.3.2024 between 1.00 p.m. to 5.00 p.m. and thereafter as and when called. He shall cooperate with the investigation.
- (iii) Anticipatory Bail Application stands disposed of accordingly.

PRADIPKUMAR
PRAKASHRAO
DESHMANE

Digitally signed by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date: 2024.03.15
11:48:17 +0530

(SARANG V. KOTWAL, J.)