Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1346 OF 2023

Amogh Gajanan Sawant ...Applicant
Versus
The State of Maharashtra ...Respondent
WITH
INTERIM APPLICATION NO. 2697 OF 2023

Lawrence V. Jusa ...Applicant
In the matter between
Amogh G Sawant ...Applicant
Versus
The State of Maharashtra ...Respondent
WITH
INTERIM APPLICATION NO. 3468 OF 2023

Nilesh D Davda ...Applicant
In the matter between
Amogh G Sawant ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Niranjan Mundargi, a/w Mr. Sandeep Karnik, for the Applicant.
Mr. S. R. Aagarkar, APP for the State/Respondent.
Mr. R. D. Soni, a/w V. R. Kasle, for the Intervener/Applicant in IA/3468/2023.
Mr. Sunny Punamiya, a/w Mr. Tushar Momaiyah, for the Intervener/Applicant in IA/2697/2023.

CORAM: N. J. JAMADAR, J.
DATED: 11th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the parties.

2. The applicant, who is arraigned in CR No.212 of 2017 registered with Tilaknagar Police Station, for the offences punishable under Sections 420 and 406 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 ("the MPID Act"), has preferred this application for bail.

3. The indictment against the applicant is that the applicant is the Proprietor of Adit Enterprises. The applicant made a representation that he was developing a project at Falake Niketan Cooperative Housing Society Ltd. at CTS No.1832(Part) Tilaknagar, Chembur, Mumbai. Mr. Lawrence, the first informant, was induced to book two flats for a consideration of Rs.1,39,00,000/-. The applicant had assured to deliver possession of the flats within a period of two years. The first informant and his son were induced to part with a sum of Rs.90,00,000/- towards consideration. The first informant alleged that despite issuing allotment letter in respect of Flat Nos.1301 and 1302, the applicant did not even start the work at site and duped him.

4. During the course of investigation, it transpired that the applicant had deceived other flat purchasers as well to the tune of Rs.5,38,64,657/-. No development was carried out at the project site.

5. Apprehending arrest, the applicant had applied for pre-arrest bail. By an order dated 4th May, 2018, interim protection was granted to the applicant on the strength of an undertaking given by the applicant that he would deposit the amount of Rs.3,82,87,973/- in three equal bimonthly installments. The applicant committed default. Eventually the application for pre-arrest bail was withdrawn.

6. The applicant was arrested. It seems the applicant again undertook to deposit the due amount, after adjusting the amount which was allegedly secured, in installments. The applicant was released on bail by an order dated 18th March, 2021. The applicant did not comply with the undertakings given by him. Resultantly, the applicant was again taken into custody. Post re-arrest, the applicant again approached the Court of Session for bail, which came to be rejected by an order dated 8th March, 2023.

7. The applicant is stated to be in custody since two years and two months.

8. Mr. Mundargi, the learned Counsel for the applicant, submitted that out of the amount of Rs.5,38,64,657/- which the applicant had allegedly defrauded, a sum of Rs.2,01,14,658/- has already been secured in the form of deposit of amount of Rs.87,21,216/- in this Court and the interest accrued thereon, which has been transferred to MPID Court, and the amounts of Rs.80,40,923/- lying in the account of the applicant with Axis Bank, and Rs.10,00,000/- lying in Shamrao Vitthal Cooperative Bank, which have been freezed, and sum of Rs.10,00,000/-, which has been deposited in the Court when the applicant was released on bail. Mr. Mundargi submitted that the applicant could not execute the project on account of circumstances which were beyond the control of the applicant. If the applicant is released on bail, the applicant would make efforts to revive the project.

9. Mr. Punamiya, the learned Counsel for the victim - applicant in IA/2196/2023 and Mr. Soni, the learned Counsel for the victim – applicant in IA/3468/2023 stoutly resisted the prayer for bail. It was submitted that the applicant does not deserve any discretionary relief. The applicant has time and again obtained reliefs from the Court by giving undertakings which were brazenly breached.

10. Mr. Soni had submitted that few of the properties owned by the applicant were proceeded against under the provisions of the MPID Act, and the applicant be thus directed to disclose the status of those properties which were attached. In response thereto, an additional affidavit came to be filed by the applicant. It has been affirmed that the applicant has no interest in the three properties which were attached under Section 4 of the MPID Act, 1999.

11. Mr. Soni submitted that the applicant had disposed of a property, while he was on bail, by tearing off a notice pasted on the said premises under the MPID Act. And the proceeds of about Rs.5,15,00,000/- were expended by the applicant to cater to indulgences.

12. Mr. Soni and Mr. Punamiya, the learned Counsel for the interveners, urged with a degree of vehemence that the innocent flat purchasers/investors have been left in lurch and, therefore, the applicant cannot be released on bail on the ground that he has been in custody for two years.

13. *Prima facie,* it appears that the applicant had induced the flat purchasers to invest the amount by making representations that the project would be developed within the stipulated period. It also appears that no development work, of whatsoever nature, has been carried out. The submissions on behalf of the flat purchasers/investors that they have been left in the lurch cannot be said to be unfounded. Indeed, there is substance in their grievances. Yet, whether the intention of the applicant was dishonest since the inception of the transaction and the acts and conduct of the applicant were driven by intent to defraud, would be a matter for adjudication at the trial. Undoubtedly, the circumstances that no development has allegedly been carried out may bear upon the determination.

14. At this stage, the Court cannot lose sight of the fact that a seizable portion of the amount, which the flat purchasers/investors have allegedly been defrauded of, has been secured in the form of deposits and debit freeze. It further appears that measures were initiated under Sections 4 and 5 of the MPID Act to attach the properties, which purportedly belong to the applicant. The applicant has been in custody for more than two years. The offence under Section 420 entails punishment which may extend to seven years. The offence under Section 3 of the MPID Act entails punishment which may extend to six years.

15. In the aforesaid view of the matter, especially having regard to the period of incarceration and the maximum punishment which the offences entail and the fact that a seizable portion of the allegedly defrauded property has been secured, in my considered view, further detention of the applicant does not seem to be warranted.

16. It is true that the applicant could not, or for that matter did not, comply with the undertakings given to the Court. It could be urged that the applicant sought time by giving undertakings which he did not mean to honor. Yet, the fact remains that the applicant was arrested after the application for pre-arrest bail came to be withdrawn, and even after he was released on regular bail. Failure to comply with the undertakings, therefore, cannot be arrayed against the applicant forever. In view of the recent decision of the Supreme Court in the case of ***Ramesh Kumar vs. The State of NCT of Delhi***[1] the prayer for bail thus deserves to be considered in the light of the parameters which govern the grant of bail.

17. Offences revolve around the documents. In the circumstances of the case, possibility of fleeing away from

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1 (2023) 7 SCC 461.

justice and tampering with evidence also appears to be remote. Hence, I am inclined to exercise the discretion in favour of the applicant.

18. Hence, the following order.

: O R D E R :

(i) Application stands allowed.

(ii) The applicant be released on bail in MPID Special Case No.45 of 2021 arising out of CR No.212 of 217 registered with Tilak Nagar Police Station, Mumbai, on furnishing a PR Bond of Rs.1,00,000/- with one or two sureties in the like amount to the satisfaction of the learned Special Judge, MPID Court.

(iii) The applicant shall mark his presence at Tilak Nagar Police Station, Mumbai, on the first Monday of every month between 10.00 am to 12.00 noon for the period of three years or till conclusion of the Special Case, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. 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.

(v) 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.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

In view of disposal of BA/1346/2023, IA/2697/2023 and IA/3468/2023 stand disposed.

[N. J. JAMADAR, J.]