

The State of Maharashtra and another ... Respondents

Mr. Pravin Rathod, A.P.I., Dadar Police Station, Mumbai.

CORAM : MANISH PITALE, J.
DATE : 02nd DECEMBER, 2024

P.C. :

. Heard learned counsel for the applicant, learned APP for the respondent No.1-State and the learned counsel appearing for the respondent No.2 (first informant).

2. The applicant is seeking bail, as he was arrested on 06.09.2023, in connection with FIR No.0367 of 2023 dated 25.08.2023, registered at Dadar Police Station, Mumbai, for offences under Sections 406 and 420 of the Indian Penal Code, 1860 (IPC). The learned APP informs this Court that subsequently, offence under Section 82 of the Registration Act, 1908, was also added. The investigation is complete and the charge-sheet is filed. The applicant has remained behind bars since the date of this arrest.

3. The allegation against the applicant is that despite a particular flat in a scheme developed by the applicant having been mortgaged to a financier, by suppressing this vital information, the applicant induced and allured the first informant into purchasing the said flat. It was after the registered sale deed

was executed and possession was taken by the first informant, that he came to know about the charge on the said flat. It is the case of the first informant that in the aforesaid manner, he has been cheated by the applicant. The real concern of the first informant appears to be that if the financier or its successor take coercive steps in respect of the mortgage, in the light of the default committed by the applicant, the first informant would be thrown out of the flat and he would suffer immeasurable loss.

4. The learned counsel for the applicant, on earlier occasions, on instructions, fairly submitted that the apprehensions of the first informant need to be addressed. It was submitted that the applicant remaining behind bars, would not lead to any solution and since the applicant desires to make a sincere effort to find a holistic solution to the problems faced by the flat purchasers, including the applicant, he was ready to voluntarily give appropriate undertaking, so as to address the apprehensions of the first informant and to assure this Court about the sincere effort being made to find such a holistic solution.

5. On earlier occasions also, affidavits were tendered. But, they were not found to be satisfactory and therefore, on 21.11.2024, one last chance was given to the applicant to submit an appropriate affidavit-cum-undertaking in the aforesaid background.

6. Today, the learned counsel for the applicant has tendered an affidavit-cum-undertaking dated 28.11.2024, executed by the applicant, wherein specific proposal is made. The said affidavit-cum-undertaking is taken on record and marked 'X'. It indicates voluntary effort on the part of the applicant to give specific undertakings to this Court, in order to address the apprehensions of the first informant.

7. The learned counsel for the applicant, in the light of the aforesaid affidavit-cum-undertaking, submits that this Court may impose appropriate conditions and allow the present application.

8. On the other hand, the learned counsel for the first informant submits that there is possibility of the applicant absconding, if relief is granted to him and therefore, even if he is to be granted bail on such a voluntary effort made on his part, this Court may consider imposing stringent conditions, so that the first informant is not left in the lurch.

9. The learned APP submits that the ingredients of the offences are made out and therefore, this Court may not show any indulgence to the applicant. It is brought to the notice of this Court that the charge has been framed. But the trial is yet to commence.

10. It is to be noted that the project in which the subject flat is located, was financed by Reliance Home Finance Limited.

11. The relevant portion of the affidavit-cum-undertaking reads as follows:

- “6. I state that I shall endeavour to close the loan account within a period of 1 year from the date of my release to ensure that no charge is reflected against the flat No.'s 2103, which is currently in possession of Mr. Potdar.
7. To make whole the first informant, in the event of failure to close the RHFL loan account within the stipulated time, or in the event of dispossession, I state that, within an additional maximum period of 90 days from the event, I am ready and willing to, at the option of the complaint
 - a. Provide an alternate accommodation with a clean title and similar specification to Flat No. 2103 on the same premises - Neha Galaxy.

- b. OR pay Rs. 1,80,00,000 (Rupees One Crore Eighty Lakh Only) towards valuable purchase consideration of the said flat along with bank interest of 9% from the date of dis-possession to the pay day.
- 8. Additionally, in case of event mentioned in #7 above, I am will at my cost and efforts provide rental accommodation to the complainant of the same specifications and in vicinity of his flat till compliances as aforesaid is done by me.”

12. This Court finds that the above quoted portion of the affidavit-cum-undertaking, voluntarily given on behalf of the applicant, does address genuine apprehensions of the first informant. There is some substance in the contention raised on behalf of the applicant that unless he is released on bail, he may not be able to abide by such voluntary undertaking and that it would be in the interest of the first informant and other similarly situated persons, that the applicant is released on bail, subject to his abiding by the aforementioned undertaking.

13. As regards the concern expressed on behalf of the first informant that the applicant may abscond, this Court shall impose appropriate stringent conditions.

14. In view of the above, the application is allowed in the following terms:

- (i) The applicant shall be released on bail in connection with FIR No.0367 of 2023 dated 25.08.2023, registered at Dadar Police Station, Mumbai, on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.
- (ii) The applicant shall abide by the voluntary affidavit-cum-undertaking dated 28.11.2024 tendered before this Court today, relevant portion of which is quoted hereinabove.

- (iii) The applicant, upon being released on bail, shall report to Dadar Police Station, Mumbai on first Monday of each month between 10:00 a.m. and 12:00 noon during the pendency of trial.
- (iv) The applicant shall surrender his passport before the investigating officer within one week from his release.
- (v) Upon release, within one week, the applicant shall inform the Investigating Officer as well as the trial court about his contact number and residential address and update the same in case of any change.
- (vi) The applicant shall co-operate with the Trial Court in completing the proceedings expeditiously and attend the proceedings before the Trial Court on each and every date, unless specifically exempted.
- (vii) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

15. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions is violated.

16. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

17. The applicant is permitted to furnish cash security of ₹ 50,000/- for a period of four weeks.

18. The application is disposed of.

(MANISH PITALE, J)