

the Indian Penal Code, 1860 (for short “the Penal Code”) and Sections, 3, 8, 13 of The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short "MOFA"), has preferred this Application to enlarge him on bail.

3. The Applicant is a partner of M/s.Akshay Developers. Initially, M/s.Akshay Developers had entered into a Development Agreement with Pioneer Co-operative Housing Society Ltd., of which the first informant is an office bearer. Smt. Sunita Joshi (A1) and Smt.Nirmala Shah (the deceased) were then the partners of M/s.Akshay Developers with 50% share in the profits. Subsequently, the Applicant (A2) and Bhavesh Jain (A3), were inducted in the said partnership with 45% share each in the profits of the firm.

4. The first informant alleged that, after reconstitution of the firm, a Development Agreement came to be executed in the month of October 2011, wherein the developer agreed to allot 10 flats to the society. It, however, transpired that the Applicant sold seven out of the ten flats to the third parties without consent or intimation to the society. FIR was, thus, lodged. The

Applicant came to be arrested on 13th October 2023.

5. Mr. Kadam, the learned Counsel for the Applicant submitted that the investigation is complete. The Applicant is willing to comply with the terms of the Development Agreement. An Additional Affidavit containing undertaking to transfer the remaining three flats to the society and pay a sum of Rs.1 crore within a period of three months, inclusive of the sum of Rs.50 lakhs which has been freezed by the Investigating Agency, and to provide the balance seven flats within a period of one year, came to be filed. The Applicant has also undertaken to execute registered instruments in favour of the Applicants in the Intervention Application No.2787 of 2024.

6. The learned Counsel for the First Informant resisted the prayer for bail. It was submitted that the Applicant has deceived not only the society but also the persons to whom the Applicant sold 7 flats in breach of the contract with the society.

7. I have perused the material on record. *Prima facie* it appears that the Applicant has transferred seven flats in breach of the contract with the society. The Applicant has, however, filed an undertaking to convey the remaining three flats in

favour of the society. The Applicant has been in custody since almost one year. The offences are triable by the Magistrate. The offences resolve around documents. The possibility of tampering with the evidence and threatening the witnesses appears to be remote.

8. As the Applicant has also shown wiliness to make amends and filed an undertaking that the amount standing to the credit of the accounts of the Applicant, which has been freezed by the Investigating Agency, may be appropriated towards the dues of the society, the Applicant deserves to be enlarged on bail.

9. Hence, the following Order:

ORDER

A] The Application stands allowed;

B] The Applicant be released on bail in C.R. No.457 of 2023 registered with Panvel City Police Station, Navi Mumbai, on furnishing a P.R. bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount.

C] The Applicant shall mark his presence at Panvel City Police Station on the first Monday of every month between

11 am to 1 pm till conclusion of the trial.

D] The Applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to the Court or any Police Officer.

E] 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 regularly attend the proceedings before the jurisdictional Court.

G] The amount of Rs.69,33,036.65/- standing to the credit account of M/s.Akshay Developers bearing account No.7166360306, Indian Bank, Panvel Branch (which has been freezed), be transferred to the Court of the Judicial Magistrate, exercising jurisdiction over Panvel City Police Station.

H] Upon transfer, the said amount be invested by the jurisdictional Court in an interest bearing account and it shall abide the further orders that may be passed by the jurisdictional Court.

I] The undertakings given by the Applicant in the Additional Affidavit are accepted as undertakings to the Court.

J] 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.

K] Bail Application disposed.

L] In view of disposal of the Bail Application, the Interim Application also stands disposed.

(N. J. JAMADAR, J.)