



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2977 OF 2023

Sunita Shrikant Joshi ... Applicant
versus
The State of Maharashtra and Anr. ... Respondents

WITH
INTERIM APPLICATION NO.2496 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.2977 OF 2023

Mahadev Khanderao Gujar and Anr. ... Applicants
and
Sunita Shrikant Joshi ... Applicant
versus
The State of Maharashtra and Anr. ... Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO.3033 OF 2023

Bhavesh Bhavarlal Jain ... Applicant
versus
State of Maharashtra and Anr. ... Respondents

WITH
INTERIM APPLICATION NO.2502 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.3033 OF 2023

Mahadev Khanderao Gujar and Anr. ... Applicants
and
Bhavesh Bhavarlal Jain ... Applicant
versus
The State of Maharashtra and Anr. ... Respondents

WITH
INTERIM APPLICATION NO.307 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.3033 OF 2023

Gangaram Bhanu Samant ... Applicant
and

Bhavesb Bhavarlal Jain ... Applicant
 versus
 The State of Maharashtra and Anr. ... Respondents

WITH
 ANTICIPATORY BAIL APPLICATION NO.98 OF 2024

Avinash Pandurang Gharat ... Applicant
 versus
 The Sr. Inspector and Anr. ... Respondents

WITH
 INTERIM APPLICATION NO.2497 OF 2024
 IN
 ANTICIPATORY BAIL APPLICATION NO.98 OF 2024

Mahadev Khanderao Gujar and Anr. ... Applicants
 and
 Avinash Pandurang Gharat ... Applicant
 versus
 The State of Maharashtra and Anr. ... Respondents

Mr. Mateen Shaikh with Ms. Muskan Shaikh, Mr. Raj Bhoir, Mr. Muzammil Shaikh, Mr. Razique Shaikh, for Applicant in ABA 98 of 2024.
 Mr. Sanjeev Kadam i/by Kalpesh Patil, for Applicant in ABA 2977 of 2023.
 Ms. Pinaz Contractor for Applicant in ABA 3033 of 2023.
 Mr. A.A.Naik, APP for State.
 Mr. Shashank Borade for Complainant.
 Ms. Esha Malik with Mr. Prajit Sahane, for Intervener in IA 2497 of 2024, 2496 of 2024 and 2502 of 2024.
 PSI Vinod S. Labhade, Panvel City Police Station, New Mumbai.

CORAM: N.J.JAMADAR, J.

DATE : 6 AUGUST 2024

PC.

1. Heard the learned Counsel for the parties.
2. These applications are preferred for pre-arrest bail in connection with C.R.No.457 of 2023 registered with Panvel City Police Station for the offences

punishable under Sections 406, 409 and 420 read with Section 34 of the Indian Penal Code and Sections 3, 8 and 13 of the Maharashtra Ownership of Flats (Regularization of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

3. Sunita Joshi – Applicant in ABA No.2977 of 2023 and Nirmala K. Shah are the partners of M/s. Akshay Developers. Initially, M/s. Akshay Developers had entered into a Development Agreement with Pioneer Co-op. Hsg.Soc., of which the first informant is an office bearer. Sunita Joshi and Nirmala K. Shah were initially having 50% share in the profits of the business of M/s. Akshay Developers. Subsequently, Suresh Tukaram Bhatade (A2) and Bhavesh Jain (A3) – Applicant in ABA 3033 of 2023, were inducted as partners in the said firm. The share of Sunita Joshi (A1) and Nirmala Shah in the profit of the said firm was reduced to 5% each. Suresh Bhatade (A2) and Bhavesh Jain (A3) were given 45% share each.

4. First informant alleged that, post reconstitution of the firm, a supplementary Development Agreement came to be executed between the Society and the firm-developer, whereunder the developer agreed to allot 10 flats to the society as, in the intervening period, there was increase in the admissible FSI. The developer accordingly constructed a building having 12 floors and consumed the increased FSI. The first informant alleged that,

instead of transferring the 10 designated flats to the society, the developer sold six flats to third parties during the period July 2022 to March 2023. Thus the first informant lodged a report against the partners of M/s. Akshay Developers.

5. Suresh Bhatade (A2) came to be arrested. During the course of investigation, it transpired that Avinash Gharat – Applicant in ABA No.98 of 2024 entered into a partnership with Suresh Bhatade (A2) under the name 'Janki Realty'. Out of the amount which was received by Suresh Bhatade (A2) by sale of the six flats, which were earmarked for the Society, a substantial portion of the amount was transferred to the account of the said firm Janki Realty and Ayush Enterprises. The applicant – Avinash Gharat had also represented himself to be a partner of Akshay Developers and had passed receipts and signed the cheques.

6. Apprehending arrest, the applicants approached the Court of Session. As the learned Sessions Judge declined to exercise discretion, the applicants have preferred these applications.

7. On 26 October 2023, this Court was persuaded to grant interim bail to Sunita Joshi (A1) observing, inter alia, that she was a minority partner with 5% minuscule share and was not exercising any effective control over the affairs of the firm.

8. Bhavesh Jain (A3) – Applicant in ABA No.3033 of 2023 was also

granted interim bail by this Court by an order dated 26 October 2023 observing, inter alia, that the sale deeds in respect of the six flats allegedly executed in breach of the contract with the society, appeared to have been executed by Suresh Bhatade (A2).

9. A coordinate Bench of this Court was persuaded to grant interim bail to Avinash Gharat – Applicant in ABA 98 of 2024, opining that, prima facie, the role of Avinash Gharat was, by and large, similar to the role of the abovenamed partners to whom the interim protection was granted.

10. I have heard Mr. Sanjeev Kadam, learned Counsel for the Applicant in ABA No.2977 of 2023, Ms. Pinaz Contractor, learned Counsel for the Applicant in ABA No.3033 of 2023, Mr. Mateen Shaikh, the learned counsel for the Applicant in ABA No.98 of 2024, Mr. A.A.Naik, learned APP for State, Mr. Shashank Borade, learned Counsel for the first informant and Ms. Esha Malik, learned Counsel for the Intervener.

11. As regards the prayer of pre-arrest bail of Sunita Joshi, learned APP fairly submitted that apart from the allegation that she had received profits of the firm M/s. Akshay Developers, proportionate to her 5% share in the profits, there is no other material to show her complicity.

12. Mr. Borade, learned Counsel for the first informant, also submitted that the material on record indicates that she had received her share of the profits.

However, according to Mr. Borade, Sunita Joshi being the partner of the firm cannot disown her liability. Since the sale deeds in breach of the contract with the society were executed on behalf of the firm, Sunita Joshi would be equally liable for the said fraudulent act.

13. I find it rather difficult to accede to the submissions of Mr. Borade. I have perused the copies of the sale deeds tendered on behalf of Bhavesh Jain (A3). The Sale Deeds appear to have been executed by M/s. Akshay Developers through its partner Suresh Bhatade (A2), alone.

14. Mr. Borade fairly submitted that there is no separate stipulation in the partnership deed regarding the execution of the instruments on behalf of the firm. Having regard to the minuscule 5% share in the profits of the firm and the material on record, which indicates that Sunita Joshi (A1) did not exercise any control over the affairs of the firm, and considering her advanced age, I am inclined to make the order of interim bail absolute.

15. Ms. Contractor, learned Counsel appearing for the Applicant – Bhavesh Jain (A3) endeavoured to impress upon the Court that Bhavesh Jain (A3) was kept in the dark by Suresh Bhatade (A2). Not a single rupee out of the consideration obtained by Suresh Bhatade (A2) by executing sale deeds in respect of the flats earmarked for the society, has been received by Bhavesh Jain (A3). On the contrary, the material on record indicates that the said

amount has been diverted to the account of Janki Realty and Akshaya Developers, another firm which is distinct from M/s. Akshay Developers.

16. Learned APP submitted that the role of Bhavesh Jain (A3) appears, by and large, similar to that of Sunita (A1).

17. Mr. Borade, learned Counsel for the first informant, however, countered the submissions on behalf of Bhavesh Jain. Inviting attention of the Court to the recitals in the partnership deed of Akshay Developers, which provides that the bank accounts of the firm would be jointly operated by Suresh Bhatade (A2) and Bhavesh Jain (A3), Mr. Borade submitted that the Applicant – Bhavesh Jain cannot be permitted to wriggle out of the situation by asserting that he was unaware of the transactions.

18. Evidently, the gravamen of indictment against the partners of M/s. Akshay Developers is that in breach of the contract with the society, the developer sold 7 flats (one more incident of sale was unearthed during the course of investigation) out of the 10 flats earmarked for the Society. As indicated above, the sale deeds have been executed on behalf of M/s. Akshay Developers by Suresh Bhatade (A2) only. Prima facie, it does not appear that there was any authorization by the other partners of Akshay Developers. Nor is there a money trail to indicate that the consideration received by the sale of the said flats reached Bhavesh Jain (A3). Whether Bhavesh Jain (A3) was

privity to the alleged fraudulent act of sale by Suresh Bhatade (A2) appears to be debatable and a matter for evidence. I am, therefore, inclined to make the order of interim bail absolute qua Bhavesh Jain (A3).

19. Learned APP as well as Mr. Borade, learned Counsel for the first informant, stoutly resisted the prayer for pre-arrest bail of Avinash Gharat – Applicant in ABA No.98 of 2024. An endeavour was made to show that a substantial part of the amount received by the developer towards the consideration for the sale of the subject flats was transferred to the accounts of Janki Realty and Ayush Enterprises. Learned APP invited attention of the Court to the statement of a witness which indicates that the applicant Avinash Gharat was instrumental in the construction of the building for and on behalf of Suresh Bhatade (A2). The Applicant used to execute the documents in the absence of Suresh Bhatade (A2).

20. Mr. Shaikh, learned Counsel for the Applicant, submitted that the applicant was the contractor. The applicant had supplied labour as well as material for construction of the subject building. The construction work was over long back. The subject flats were sold in the year 2022-23. Mr. Shaikh further submitted that the applicant has submitted the bills raised by the applicant to account for the money, which was transferred to the account of the applicant towards the services rendered by the applicant in the capacity of

the contractor. It was further submitted that the deed of partnership between Suresh Bhatade (A2) and the applicant – Avinash was executed in the year 2014 before the Supplementary Development Agreement came to be executed between Akshay Developers and the Society. Therefore, the applicant cannot be roped in for the alleged fraudulent acts of Suresh (A2). Attention of the Court was invited to the documents annexed to the additional affidavit of the applicant.

21. I have perused the material on record which bears upon the complicity of Avinash Gharat. Evidently, the applicant was not a partner of Akshay Developer. He was not in the frame when the FIR was lodged. The principal accusation against M/s. Akshay Developers was of transfer of the flats earmarked for the society. Avinash Gharat is sought to be roped in as the beneficiary of the consideration fraudulently received by Akshay Developer. At the same time, there is material to indicate that Avinash Gharat was a contractor. Construction work was carried out by the applicant. In addition to the documents which are sought to be relied upon by the applicant - Avinash Gharat, even the statement of the witness, prima facie, indicates that the construction of the building was supervised by the applicant – Avinash Gharat. The Partnership Deed pressed into service on behalf of the prosecution indicates that it was executed even before the execution of the

Supplementary Agreement between Akshay Developer and the Society.

22. In these circumstances, Avinash Gharat can be said to have offered an explanation which competes in probability with that of the prosecution. The question as to whether the amounts were transferred to the account of the applicant – Avinash Gharat towards the work executed by Avinash Gharat as the contractor, or he was privy to the fraud, would be a matter for adjudication at the trial. At any rate, the custodial interrogation of the applicant does not seem warranted to facilitate investigation as the offences revolve around the documents. I am, therefore, persuaded to make the order of interim bail qua Avinash Gharat also absolute.

23. Ms. Malik, learned Counsel for the Intervenors submitted that while executing the instruments by the developer, the interest of the applicants, in the Intervention Application, deserves to be protected.

24. I am afraid, the grievance sought to be raised by the applicants in the Intervention Applications can be legitimately delved into in these proceedings. Therefore, keeping open all the rights of the applicants in the Intervention Applications to raise their grievances in an appropriate proceedings before the appropriate forum, Interim Applications deserve to be disposed.

25. Hence, the following order :

ORDER

- (i) The Applications stand allowed.
- (ii) The order dated 26 October 2023 granting interim bail to Sunita Joshi (A1) – Applicant in ABA No.2977 of 2023 is made absolute on the terms and conditions incorporated therein.
- (iii) The order dated 30 October 2023 granting interim bail to Bhavesh B. Jain (A3) – Applicant in ABA No.3033 of 2023 is made absolute on the terms and conditions incorporated therein.
- (iv) The order dated 16 January 2024 granting interim bail to Avinash P. Gharat – Applicant in ABA No.98 of 2024 is made absolute on the terms and conditions incorporated therein.
- (v) In addition, the Applicants shall regularly attend the proceedings before the jurisdictional Court.
- (vi) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for pre-arrest bail only.
- (vii) The applicants in Intervention Applications are at liberty to take out appropriate proceedings before the appropriate forum.
- (viii) All Interim Applications stand disposed.

(N.J.JAMADAR, J.)