

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

ANTICIPATORY BAIL APPLICATION NO.485 OF 2024

Manish Prakash Mutha & Ors.

.... Applicants

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Raja Thakare, Senior Advocate a/w Pranav Badeka a/w Bharat Manghani a/w Kanishk Waghware i/b. Gautam Jain, Advocate for Applicants.
- Ms. Pallavi N. Dabholkar, APP for the State/Respondent.
- Mr. Aabad Ponda, Senior Advocate a/w Mr. Sharad Bansal a/w Murtuza Federal a/w Veer Ashor a/w Nikhil Jalan i/b. Federal & Co., Advocate for Intervenor.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th FEBRUARY, 2024

P.C. :

1. Heard Mr. Raja Thakare, learned Senior Counsel for the Applicants, Mr. Aabad Ponda, learned Senior Counsel for the Intervenor and Ms. Pallavi Dabholkar, learned APP for the State.

2. By a separate order passed in the Interim Application,

the first informant is directed to be added as party Respondent. Therefore, I have heard the parties. Learned Senior Counsel for the first informant seeks permission to file affidavit-in-reply with compilation of documents. Permission is granted. The affidavit-in-reply shall be filed within a period of two weeks from today. The Applicants are at liberty to file rejoinder within two weeks thereafter, with a copy to the other side. Both the parties shall exchange copies of affidavit-in-reply and rejoinder. On this ground, I am adjourning the matter. However, I have heard the parties for consideration of ad-interim relief.

3. The FIR is lodged by the informant Yusuf Saifi. He has stated that he and his brother Ali Ajgar had formed M/s. Saifi Developers Pvt. Ltd. in the year 2015. The business of this company was to invest in the real estate projects. The informant was acquainted with one Ashok Chhajed. He in turn introduced the informant to the present Applicants who were the Directors of M/s. Sanklesha Constructions. The informant decided to invest in their project. On 15/05/2015, a document in the

nature of partnership deed was executed by the partners of M/s Sanklesha Constructions. Vide that agreement, M/s. Saifi Developers Pvt. Ltd. was made 25% partner in the firm. However, the partnership deed was not registered. On 21/05/2015 an MOU was entered into between both these firms. According to the first informant, the MOU had annexure No.1 mentioning a list of 44 flats. As per the clause 5 of that MOU, the accused's firm was to give 40,000 sq.ft. area at the rate of Rs.3,750/- per sq.ft. for 44 flats and 40 car parking places. In clause No.6 of the MOU, it was mentioned that the accused company was not to enter into any other transaction with any other person in respect of those flats and those car parking places. It is further mentioned in the FIR that the accused gave registration of only 10 flats. But the other 34 flats as agreed, were not given to the informant's firm. Some of the flats were sold. The FIR mentions that the parties had decided to proceed in this Court on the original side. The gist of the FIR is that the informant's firm had invested Rs.15 Crores in the project of the firm of the Applicants. The accused had not given 34 flats to the informant's firm and

instead sold them to others and thus caused loss to the tune of more than Rs.12 crores. It is also alleged that the accused were not handing over possession of the 10 flats, which were registered in the name of the informant's firm. On this basis, the FIR is lodged.

4. Learned Senior Counsel appearing for the Applicants invited my attention to the other litigation between the parties. Learned Senior Counsel appearing for both the parties also invited my attention to the aforementioned MOU and the partnership deed.
5. Learned Senior Counsel appearing for the Applicants submitted that the High Court at the first instance had granted stay on disposing of those flats. Subsequently, that stay was vacated. As of today, the matter is pending for arbitration before the Arbitrator appointed by the High Court. According to Mr. Thakare, the informant is not attending the arbitration proceedings. Mr. Ponda vehemently disputed this fact. He added

that there was no hearing in the Arbitration for the past three years.

6. Mr. Thakare submitted that after having failed to get any relief on the civil side, the informant had chosen to file the present FIR.

7. Learned APP supported the contentions of Mr. Ponda and she submitted that as of today, no flats are available as referred to, in the agreement. Mr. Ponda and learned APP submitted that, the very fact that the accused had obtained a huge amount and in return the informant has got nothing, shows that right from the inception the Applicant always had the intention to misappropriate the amount given by the informant. He submitted that there was the list of 44 flats as the part of the MOU and subsequently the accused were disputing that list by claiming that it is not a part of the MOU. This itself is dishonest.

8. Mr. Ponda further submitted that the informant had exercised the second option mentioned in the MOU of retaining

those 44 flats and the parking places. But even before he could exercise that option, the Applicants had sold those flats to the third parties and subsequently also he mortgaged some flats and sold the remaining.

9. I have considered these submissions and as mentioned earlier, I have perused the orders passed by the High Court in the original civil jurisdiction.

10. At the first instance, a Single Judge Bench of this Court on the original side, passed an order on 15/07/2019 in Commercial Arbitration Petition No.(L) 627/2019. By the operative part, the Applicants herein were directed not to create any third party rights in respect of 15 flats, which the Applicants intended to transfer to the first informant. The Applicants herein were also directed not to create third party right in the unsold commercial area of 10,000 sq.ft. till further orders. The Applicants were directed to file affidavit disclosing the unsold area, which was available with them.

11. After further steps, finally the order was passed by the next bench on 31/03/2021, thereby the relief granted by the earlier bench vide the order dated 15/07/2019, was vacated. This order was passed on 31/03/2021. It was challenged before the Appellate bench. The Appeal was dismissed by a Division Bench on 29/04/2021.

12. On the same day i.e. on 31/03/2021 by a separate order the Single Judge Bench of this Court on the original side appointed Mr. Rashmin Khandekar as a sole Arbitrator in respect of the dispute between these parties. As mentioned earlier, the arbitration proceedings are still pending and there is hardly any progress in those proceedings.

13. In this background the first informant has filed his FIR on 06/02/2024, which is registered at Byculla Police Station vide C.R.No.81/2024 u/s 406, 420 r/w 120-B of the Indian Penal Code. The Applicants are seeking anticipatory bail in

connection with this offence. The offence as of now is investigated by the Economic Offences Wing.

14. Learned Senior Counsel for the first informant submitted that though the FIR is registered in February 2024, the informant had made a complaint before the police in August 2023. He therefore submitted that, delay in this case in approaching the police, will not matter. According to him, the orders were obtained by the Applicants on the original side by suppressing material facts. According to Mr. Ponda, the exact dispute between the parties, was left open and the only question which was considered on the original side, was whether the informant was correct in saying that their firm had no GST liability in respect of the balance payment.

15. Considering the above orders passed on the original side, at this stage, it can be seen that the dispute in respect of the MOU and those 44 flats, was already argued at different stages on the civil side and after hearing the parties, the stay in

creating third party interest in respect of some of the flats, was vacated. The parties had approached this Court on the civil side. No stay was granted in favour of the first informant prohibiting any sale or creation of third party interest in respect of any of the flats in the project. This fact is of some importance in the context of the allegations made against the Applicant. Therefore, at least for consideration of ad-interim relief, the Applicants have made out a case in their favour. It is made clear that after the affidavit-in-reply and the rejoinder, if any, are filed, all these questions can be decided together. But as of today, the Applicants can be protected by way of ad-interim relief.

16. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.81/2024, dated 06/02/2024, registered with Byculla Police Station, Mumbai, till the next date, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of

Rs.30,000/- (Rupees Thirty Thousand Only) each, with one or two sureties each, in the like amount.

- (ii) The Applicants shall attend the concerned investigating agency from 11/03/2024 to 14/03/2024 between 01.00 p.m. to 05.00 p.m. and thereafter as and when called and shall cooperate with the investigation.
- (iii) The parties are at liberty to file affidavit-in-reply and rejoinder as mentioned earlier in the earlier part of this order.
- (iv) This order shall operate till 02/04/2024.
- (v) Stand over to 02/04/2024.

(SARANG V. KOTWAL, J.)