

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1922 OF 2024

Ganesh Laxman Zagade		
Yogesh Chandrakant Zagade		
Hrishikesh Chandrakant Zagade	...	Applicants
Vs.		
State of Maharashtra and another	...	Respondents

Mr. Rahul Gaikwad a/w. Mr. Aman Jhawar i/b. Mr. Shashank Sansare for Applicants.

Mr. Prasanna P. Malshe, APP for Respondent-State.

Mr. Gangad, PSI, Chakan Police Station.

CORAM : MANISH PITALE, J.

DATE : JULY 22, 2024

P.C. :

. Heard Mr. Gaikwad, learned counsel for the applicants and Mr.Malshe, learned APP for the respondent-State.

2. The applicants are apprehending arrest in connection with FIR No.0375 of 2024 dated 01.06.2024 registered with Chakan Police Station, District - Pimpri Chinchwad, for offences under Sections 406, 420 read with Section 34 of the Indian Penal Code, 1860 (IPC) as also under Sections 3, 5, 8, 11 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA).

3. The grievance of the informant is that the applicants have duped him, for the reason that he has paid substantial amounts to the applicants in connection with an agreement concerning booking of a flat in a project being implemented and constructed by the applicants. It is the case of the informant that from the very beginning, the applicants acted with the intention of duping the informant, thereby indicating ingredients of the offences alleged against the applicants.

4. The learned counsel for the applicants submits that the FIR is belated, for the reason that the agreement in question was executed as far back as on 30.07.2013. The project was delayed. But now, the construction is complete and the applicants are ready to handover possession to the informant, provided he pays the entire consideration, which is about Rs.17.01 lakhs, further submitting that till date, the informant has paid about Rs.15.15 lakhs, thereby indicating that there is a shortfall of a specific amount, which is due from the informant. It is submitted that in the interregnum, the informant instituted proceedings under the Consumer Protection Act as well as before the Real Estate Regulatory Authority (RERA), thereby indicating that this is essentially the civil dispute being given the colour of criminality.

5. On the other hand, the learned APP submits that perusal of the statement of the informant, leading to registration of the FIR would show that the essential ingredients of the alleged offence are clearly made out against the applicants, and therefore, this Court may not show any indulgence to the applicants. It is further submitted that the FIR having been registered recently on 01.06.2024, investigation is at preliminary stage.

6. This Court has considered the material on record. Although the statement of the informant gives an impression that the applicants have acted in a manner so as to dupe the informant, in the statement itself, it is conceded that the basic transaction / document was executed between the parties as far back as in the year 2013. In fact, it is brought to the notice of this Court that the agreement was executed on 30.07.2013. FIR has been registered on 01.06.2024 i.e. about 11 years after the execution of the said agreement.

7. Even if it is to be presumed that the grievance of the informant arose some time after execution of the agreement dated 30.07.2013, the

informant has already instituted civil proceedings by approaching the competent forum under the Consumer Protection Act as well as approaching the RERA. Even the said proceedings were initiated as recently as in the year 2023. Considering the aforesaid material, this Court is of the opinion that, *prima facie*, the informant is seeking to give the colour of criminality to a dispute that can be said to be a civil or commercial dispute between the parties. On this ground alone, the applicants deserve to be granted relief in the present application, so long as they are ready to co-operate with the investigation.

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

- A. In the event the applicants are arrested in connection with FIR No.0375 of 2024 dated 01.06.2024 registered with Chakan Police Station, District - Pimpri Chinchwad, they shall be released on bail on furnishing PR Bond of Rs.50,000/- (Rupees Fifty Thousand only) each with one or two sureties in the like amount;
- B. The applicants shall remain present before the investigating officer on 25.07.2024 between 10:00 a.m. and 12 noon, and thereafter, as and when called by the investigating officer;
- C. The applicants shall co-operate with the investigation;
- D. The applicants shall not influence the informant, witnesses or any person concerned with the case and they shall not tamper with the evidence.

12. In case any of the aforesaid conditions are violated, the present order would be liable to be cancelled.

13. The application stands disposed of.

(MANISH PITALE, J.)