

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

ANTICIPATORY BAIL APPLICATION NO. 2900 OF 2024

Gaurav Sunil Somani	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Aabad Ponda, Senior Advocate, a/w Mr. Shailesh S. Kharat for the Applicant.

Ms. Rutuja A. Ambekar, APP for Respondent-State.

**CORAM: MANISH PITALE, J.
DATE : 25th OCTOBER 2024**

P.C. :

1. Heard learned Senior Counsel for the applicant and learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No. 0250 of 2024 dated 28th May 2024 registered at Dighi Police Station, Dist. Pune, for offences under Sections 406, 409 and 420 read with 34 of the Indian Penal Code, 1860 (IPC) and Sections 3, 4 and 13 of the Maharashtra Ownership of Flats Act, 1963 (MOFA).

3. The informant has raised a grievance leading to registration of the FIR to the effect that he parted with substantial amounts of money in pursuance of an agreement, whereby he had booked a flat in a particular construction scheme being undertaken by the

firm, of which the applicant is one of the partners. It is claimed that by receiving such amounts and failing to live up to the promises, the applicant has committed the aforesaid offence.

4. The learned Senior Counsel for the applicant has referred to a number of mitigating circumstances as to why the firm of the applicant could not adhere to the promised schedule. It is submitted that due to the aforesaid reasons and in the light of certain proceedings before competent authorities, the project could not adhere to the schedule and it cannot be said that from the very inception, the applicant with criminal intent, acted in such a manner so as to cause loss and harassment to the informant.

5. The learned APP on the other hand, submitted that the ingredients of the offences are clearly made out and that offences registered in the present case are on the basis of the material brought to the notice of the Investigating Authority by the informant.

6. Having perused the material on record in the light of the rival submissions, this Court is inclined to allow the application, for the following reasons :

- (i) The documents on record show that as per the agreement executed between the informant and the firm, of which the applicant is one of the partners, the project was to be completed and possession was to be handed over by 30th

June 2023. There is substance in the contention raised on behalf of the applicant that due to intervening covid-19 pandemic period, the construction industry was adversely affected and the expected timeline could not be adhered to.

- (ii) There is a document placed on record showing that in such circumstances, extension of time for completion of projects was indeed granted. This could be said to be one of the mitigating factors.
- (iii) The documents on record further show that the aforesaid firm suffered a setback when an amount of Rs.6.5 crores was siphoned away from its bank account, due to the activities of an employee of the bank, where the firm had its bank account. In that regard, an FIR was registered at the behest of the applicant on 24th January 2024. This can also be said to be one of the factors creating a financial crunch for the aforesaid firm and upon appropriate proceedings initiated before the National Company Law Tribunal (NCLT), the flat purchasers, including the informant herein, approached the committee of creditors and their claims have been admitted. There were certain orders passed in the aforesaid proceedings before the NCLT, which also resulted in the construction work being adversely affected.
- (iv) The aforementioned circumstances *prima facie* can be said to be mitigating factors in favour of the applicant. In such a

situation, *prima facie*, it would be difficult to impute dishonest intention on the part of the applicant, right from the inception of inducing the informant into investing substantial amounts. The applicant has been able to make out a *prima facie* case in his favour.

- (v) The applicant undertakes to cooperate with the investigation.

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

- (a) In the event the applicant is arrested in connection with FIR No. 0250 of 2024 dated 28th May 2024 registered at Dighi Police Station, Dist. Pune, he shall be released on bail on furnishing PR Bond of Rs.50,000/- and one or two sureties in the like amount.
- (b) The applicant shall remain present before the Investigating Officer on 28th and 29th October 2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when called by the Investigating Officer. The applicant shall cooperate with the investigation.
- (c) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses or any other person concerned with the case.

8. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application.

9. The application is disposed of.

MANISH PITALE, J.