

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

ANTICIPATORY BAIL APPLICATION NO. 3632 OF 2023

Janu Kalu Gharat & Ors.

..Applicants

Versus

The State of Maharashtra

..Respondent

**WITH
INTERIM APPLICATION NO. 56 OF 2024
WITH
INTERIM APPLICATION NO. 917 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO. 3632 OF 2023**

Mr. M. K. Dubey i/b. Mr. Anil Dubey for Applicants in
ABA/3632/2023.

Mr. Harshad Sathe for Intervenor in IA/56/2024.

Mr. Sagar Batavia i/b. Siddharth A. Mehta for Intervenor in
IA/917/2024.

Mr. Shrikant H. Yadav, APP for State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 25 JULY 2024

P.C. :-

1. The Applicants are seeking anticipatory bail in connection with C.R.No. 393 of 2023 registered at Kharghar Police Station, Navi Mumbai, on 08.11.2023, under Sections 420 and 447 r/w. 34 of the Indian Penal Code.

2. Heard Shri. Dubey, learned counsel for the Applicants, Shri. Harshad Sathe, learned counsel for the Intervenor in I.A.No.56 of 2024, Shri. Sagar Batavia, learned counsel for the Intervenor in I.A.No.917 of 2024 and Shri. Shrikant Yadav, learned APP for the State.

3. The F.I.R. is lodged by one Datta Bandgar. He has stated that, one Jawwad Mir was having a firm by the name M/s. Century Developers. He was in the construction business. He had taken the land situated at Khutuk Bandhan, Sector No.35D, Kharghar, Survey No.60, Hissa No.2/7 and 2/12 to 2/23, where the houses of the present applicants stood, for development. However, because of the financial constraints, he could not go ahead with the development of that land. Therefore, they had a common meeting between the said Jawwad, the informant, as well as, the present applicants. The informant agreed to take over the development project. He was told that the necessary permissions for the construction were taken by the applicants on behalf of M/s. Century Developers from Ove Gram Panchayat. Jawwad Mir had paid Rs.41,50,000/- to the applicants. The informant

inspected the land. It was admeasuring 14 *gunthe*. The informant decided to develop that land. He took over the business of M/s. Century Builders and Developers from Jawwad Mir, on 21.07.2014. The informant and the applicants decided to take the developed area at 50% shares each. The applicants demanded some more amount from the informant. The informant paid additional amount of Rs.21,52,000/- to the applicants. It was decided that five wings A,B,C,D & E were to be built for ground plus five floors. It was decided that 110 flats were to be constructed. A development agreement and the irrevocable power of attorney were executed between the informant and the applicants on 21.07.2014. It is mentioned that the A, B and C wings were to be owned by the informant and D & E wings were to be owned by the applicants. A supplementary development agreement was executed on 11.02.2015. While the construction was going on, there was a dispute between the applicant Janu Gharat and his cousin Vasudev Gharat and the litigation reached this Court on the Civil side. The F.I.R. thereafter goes on to mention as to why the informant could not construct the E wing.

According to the informant, out of the decided amount of Rs.70 lakhs, Rs.63,02,000/- were paid to the applicants. In spite of entering into these transactions, the applicants approached this Court on the Civil side for demolishing the constructed portion. It is further alleged that, since September 2018, the Applicants had sold the flats in C-wing which actually belonged to the informant. There are further general allegations that the further construction process and the peaceful residence of the flat purchasers was interfered with by the family members of the applicants. They had also given some objection letters, so that, the electricity connection could not be given to C-wing. It is further alleged that the 7/12 extract of a land on which the applicants' houses stood show the names of the applicants' father and uncle. According to the first informant, in this background, the applicants accepted the amount from the informant and Jawwad Mir and thus, cheated him. There are further allegations that, they had trespassed into the flats sold to the flat purchasers viz. Krushna Sahu, Sunanda Shette etc. These are the allegations made in the F.I.R.

4. Learned counsel for the applicants submitted that the

first informant has not honoured his commitment of giving 50% share of the constructed project to the applicants. The applicants have not received the value for this development project. Though, some amount was paid to them, but the major amount was to come to their share by way of the constructed portion. The first informant has not constructed the portion which was come to their share and, therefore, in fact, the applicants have suffered losses. He submitted that the development agreement shows that the onus to obtain the permission was on the first informant, as mentioned in the development agreement. Therefore, the applicants cannot be held responsible for any such irregularity. There was no criminal intention and no such criminal intention was made out from the reading of the F.I.R. In this background, the applicants' custodial interrogation is not necessary.

5. Learned counsel appearing for the first informant submitted that, in the Power of Attorney, some portion from C-wing in the form of shops and flats was given to the applicants. The Power of Attorney mentions that one shop from A-wing was to be given to the applicants; which was already given and 10 flats

from C-wing were to be given to the applicants; they were also given. Learned counsel for the informant added that the applicants are trespassing in some of the flats and are obstructing the peaceful cohabitation of the residents of the project. Therefore, their custodial interrogation is necessary.

6. At this stage, learned counsel for the applicants submitted that the Flat Nos.G-1 to G-4 and 101 to 106 mentioned in that power of attorney, which is at page No.112 of the interim application of the first informant, which were to be given to the applicants, were sold by the informant by registered agreements.

7. Learned counsel appearing for the other intervenors, who have claimed to be the bonafide flat purchasers, submitted that he is representing 26 flat purchasers. The intervenors in that interim application i.e. I.A.No.917 of 2024 are not able to enjoy their peaceful possession because of the obstruction created by the applicants and their families.

8. Learned APP repeated the submissions of the learned counsel for the intervenors in both the interim applications.

9. I have considered these submissions. From the F.I.R. it appears that the applicants themselves have not received the value for this development project in the form of constructed portion of the project. They have received the amount of Rs.63 lakhs. Some amount is still due. From the allegations and the submissions, it is clear that the applicants themselves have suffered the monetary losses in respect of the benefits which they were to get. Therefore, it is quite clear that, there cannot be any criminal intention to cheat the first informant or to misappropriate any construction constructed by the informant. As far as, the grievances of the other intervenors are concerned, who are the bonafide flat purchasers, there are no direct allegations against the present applicants in the F.I.R., specifically pointing out any particular role played by them. In such situation, it is always open for the parties to approach the Civil Court for the appropriate remedies.

10. Considering all this discussion, I am satisfied that the applicants' custodial interrogation is not necessary. They can be protected by way of order U/s.438 of the Cr.p.c., 1973. However, they shall co-operate with the investigation.

11. Hence, the following order.

ORDER

- i) In the event of their arrest in connection with C.R.No. 393 of 2023 registered at Kharghar Police Station, Navi Mumbai, the Applicants are directed to be released on bail on their executing P. R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.
- ii) The Applicants shall cooperate with the investigation.
- iii) The Application is disposed of.
- iv) Since, I have heard the learned counsel for the intervenors, nothing survives in the connected two interim applications. They are also disposed of.

(SARANG V. KOTWAL, J.)