IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

[1] ANTICIPATORY BAIL APPLICATION NO.375 OF 2024

Siddik Mohammed Hafizi ....Applicant
Versus
The State of Maharashtra .... Respondent

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WITH
INTERIM APPLICATION NO.1023 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.375 OF 2024

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WITH
[2] ANTICIPATORY BAIL APPLICATION NO.328 OF 2024

Irfan Yusuf Hafizi ....Applicant
Versus
The State of Maharashtra .... Respondent

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WITH
INTERIM APPLICATION NO.1021 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.328 OF 2024

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WITH
[3] ANTICIPATORY BAIL APPLICATION NO.329 OF 2024

Iqbal Valli Hafizi ....Applicant
Versus
The State of Maharashtra .... Respondent

....

WITH
INTERIM APPLICATION NO.1022 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.329 OF 2024

Mr. Hrishikesh Mundargi, Advocate i/b. Abhilesh Chitre for the Applicant in all ABAs.
Mr. Prashant P. Jadhav, APP for the Respondent-State.
Mr. B.P. Pandey, Advocate a/w. Ridhima Mangaonkar, Shyam Tripathi i/b. Vivek Pandey for the Intervenor.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th SEPTEMBER, 2024

P.C. :

1. All these three Applications are decided by this common order today because they arise out of the same registered offence. For convenience, the Applicants are referred to by their names in the following discussion :

2. Heard Shri Hrishikesh Mundargi, learned counsel for the Applicants in all the Applications, Shri Prashant Jadhav, learned APP for the Respondent-State and Mr. B.P. Pandey, learned counsel for the Intervenor.

3. The Applicants are seeking anticipatory bail in connection with C.R. No.899/2023 registered at Oshiwara police station, Mumbai on 2.10.2023 under Sections 406, 420, 504, 506, 120-B, 34 of IPC and under Sections 3 & 13 of the

Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, 'MOFA')

4. The FIR is lodged on 2.10.2023. The FIR is lodged by one Inamulhaq Barkat Ali Khan. He has stated that in 2010, the Applicant Iqbal and the Applicant Irfan told him that M/s. Hitech Town Developers and M/s Hafizi Builders through a Joint Venture by the name M/s. Hitech Hafizi Town Developers are developing a building known as 'Khadija Hitech Tower' at Jogeshwari (West) and the building which was proposed to be built was ground + 2 floors with podium parking and above that was to have 23 floors. Both of them informed the informant that they themselves as well as the Applicant Siddik Hafizi were the Partners. They told him that if he purchased a flat in that building, he could get it for a reasonable price.

5. The informant has further stated that Irfan and Iqbal had taken him to the proposed project site and at that time construction was completed upto 11 floors. After that, the

informant and the Applicant Iqbal went to the office of the Applicant Siddik at Jogeshwari. At that time, the Applicants Irfan and Iqbal introduced him to the Applicant Siddik and the architect Farukh Abdulla Wahab (since deceased). The Applicant Siddik showed him the plan for the proposed building. The informant liked the plan and the location. He discussed the price. He decided to purchase the Flat No.2222-A on the 22nd floor admeasuring 1030 sq. ft. for the price of Rs,72,50,000/-. After that, on the say of the Applicants Irfan and Iqbal, the informant paid amount of Rs.10 Lakhs as a booking amount on 20.5.2010 through cheque payment in the name of the Hitech Hafizi Town Developers. At that time, the Applicants Iqbal and Siddik gave an allotment letter on the letter-head of the Hitech Hafizi Town Developers on 21.5.2010 in respect of flat No.2222-A of Hitech Tower. After that, the informant, on the instructions of the Applicants Irfan and Iqbal, paid various amounts to the Applicant Siddik. In all, he paid Rs.62,50,000/- through cheques and through cash. Out of which, Rs.32 Lakhs were paid through cash. The informant waited for the possession of his flat. He used to visit the construction site. On one day, he came to know that since the Applicants Irfan and Siddik had carried out unauthorized construction in the said building; the BMC had stopped the construction. When the informant questioned the Applicant Irfan, he gave evasive answers and assured that the informant would get his flat. The informant came to know that BMC had imposed penalty on the Applicant Siddik for carrying out unauthorized construction work.

6. On 5.1.2013, the informant received a notice from the office of the Hitech Hafizi Town Developers demanding Rs.1,24,745/- towards service tax and VAT. When the informant again asked the Applicant Irfan, he again gave evasive answers.

7. On 31.10.2015, Hitech Hafizi Town Developers gave one more letter to the informant mentioning that he would be given possession of his flat, but instead of Flat No.2222A, the flat number was mentioned as Flat No.2206F. The Applicant Irfan assured the informant that the error would

be corrected. On 27.3.2017, the Applicant Irfan called the informant to the office of the Applicant Iqbal and the Applicant Siddik, and, told him to make the payment of the balance amount in the name of the Municipal Corporation of Greater Mumbai (MCGM). Trusting them, the informant immediately paid Rs.9,94,479/- through Demand Drafts in the name of the MCGM. Thus, he paid Rs.9,94,479/- more. After that, the Applicant Irfan handed over one rough agreement. It was not registered. It was signed by only one owner of the developers and it had forged signature of the informant. On this occasion, the flat number was mentioned as Flat No.2402 instead of Flat No.2222-A. The Applicants Irfan and Siddik did not explain this. The Applicant Irfan assured him that he could get the flat of any number because the number was not important, but, he would get a flat of the same area i.e. 1030 sq. ft..

8. The Applicant Irfan started avoiding the informant. In 2019-20, the construction started again. On 9.9.2020, the informant was given a letter on the letter-head

of Hafizi Builders mentioning that they would provide him one 2 BHK flat in Khadija Hitech Tower building at the time of possession. The informant questioned the Applicant Irfan as to, who, out of Hitech Hafizi Town Developers and Hafizi Builders was actually developing the property. He told the informant that both were their companies. In June, 2021 the others started getting possession. The informant went to the Applicant Siddik's office on 20.6.2021 asking as to when he was to get possession. At that time, the Applicant Irfan abused and threatened him. Ultimately affter getting fed up and after realizing that he had lost his money, this FIR is lodged.

9. Learned counsel for the Applicants made the following submissions :

i. He submitted that there was no intention to cheat the informant. The O.C. was given upto 21st floor and possession to all the purchasers upto 21st floor was given. Initially, the proposal was for construction of 28 floors and the plan for 28 floor was submitted in January, 2010 to the BMC. It was conditionally approved. However, the plan to construct the floors above the 21st floor had to be scrapped because of the change in D.C.R. which came into effect in November, 2018. Therefore, the further floors could not be constructed and the possession could not be given to the informant.

ii. He submitted that the informant was not the only person who had shown willingness to purchase the flat on the 22nd floor or above. There were other flat purchasers as well and they had already lodged C.R. No.486/2023 and C.R. No.141/2023 at Oshiwara Police Station mainly against the Applicant Siddik Hafizi. Out of these two registered offences, the Applicant Iqbal was shown as an accused in C.R. No.141/2023 and the Applicant Irfan was not an accused in either of these two other offences.

iii. Learned counsel relied on the order passed by a coordinate Bench of this Court (Coram: N.J. Jamadar, J.) on 23.8.2024 in A.B.A. No.2794/2023 and A.B.A. No.2795/2023 preferred by the Applicant Siddik. Both these Applications were allowed and the Applicant Siddik was granted anticipatory bail in both these offences. Learned counsel submitted that this fact may be taken into consideration.

iv. He submitted that in the background of these allegations, there is no necessity of custodial interrogation of the Applicants. There is no specific role attributed to the Applicants Iqbal and Irfan. In any case their role is very minor.

10. Learned counsel for the first informant submitted that the informant is a senior citizen. Today his age is seventy years. His wife is 68 years of age and she is suffering from cancer which has advanced to the third stage. He has lost huge amount which he could have used for the medical treatment of his wife. Apart from these submissions, learned counsel submitted that the facts mentioned in the FIR clearly makes out serious offences of cheating, criminal breach of trust and misappropriation of huge funds. The Applicants were aware that the plan for the floors above 21st floor was

conditional and it ultimately was scrapped. This condition was never brought to the notice of the informant. There are specific roles attributed to each of the Applicants. At no point of time, the Applicants had told the informant that there was a possibility that further floors would not be constructed. Learned counsel further submitted that even after the new D.C.R. came into effect from November, 2018 a letter was given to the informant which was dated 9.9.2020 mentioning that he would be getting a 2 BHK flat in Khadija Hitech Tower Building. Therefore it is quite clear that the Applicants had knowingly, with the requisite intention had committed that offence.

11. Learned APP supported the submissions of the learned counsel for the informant. He submitted that there are six antecedents against the Applicant Siddik and there is one offence being C.R. No.141/2023 against the Applicant Iqbal, as mentioned earlier. The allegations in the FIR are supported by the bank transactions. He submitted that

considering the gravity of the offence, anticipatory bail may not be granted to these Applicants.

12. I have considered these submissions. The facts mentioned in the FIR show the specific role played by each of the Applicants separately. The inducement was clearly made by both the Applicants Iqbal and Irfan. They induced the informant to part with the amount which was the purported price of the flat. The Applicant Siddik had received the money from time to time. Initially, in all Rs.62,50,000/- were received by him in the account of the joint venture. The Applicant Siddik was a Partner of the joint venture. The other two Applicants had represented to the informant that they were also Partners in that Joint Venture.

13. The role of the Applicant Irfan is mentioned in the FIR that, at different stages, the Applicant Irfan was asking the informant to make the payment. Even at his instance, an amount of Rs.9,94,479/- was paid to MCGM through Demand Drafts. At every stage, the Applicant Irfan was misleading the informant and was asking him to make the payment. Thus,

from the facts mentioned in the FIR, it is quite clear that the informant was induced to part with the money, though the Applicants were aware that the plan was sanctioned only upto 21st floor and in the year 2010 only a conditional plan was sanctioned for the constrution above 21st floor. This fact was not brought to the notice of the first informant. Thereafter it was quite clear that there could not be any construction above 21st floor particularly after the year 2018; even then the informant was not told about it and a letter dated 9.9.2020 was sent mentioning that the possession would be given to the informant. Thus at every stage, right from the year 2010 upto the year 2020, the informant was kept in the dark. Huge amount paid by him was misappropriated. Therefore, all the ingredients of the offence of cheating as defined under Section 415 of IPC, which is punishable under Section 420 of IPC, are made out. Apart from that, the offence of criminal breach of trust, defined under Section 405 of IPC which is punishable under Section 406 of IPC, is made out. The offence under

Section 13(1)(2) read with the defining Section 3 of the MOFA are rightly applied.

14. The informant has lost huge amount in the year 2010 itself. He has not received the possession of the flat. More than fourteen years have passed waiting for possession of the flat. He has lost the money. He is in dire financial need as his wife is suffering from advanced stage of cancer. All this adds to the gravity of the offence.

15. I do not find any substance in the argument that the custodial interrogation of the Applicants is not necessary. The *modus operandi,* the details of the transaction and the money trail can be found out only after custodial interrogation. Apart from that, the gravity of the offence is also a strong consideration for grant or denial of the anticipatory bail order.

16. As far as the order of the co-ordinate Bench of this Court is concerned, the consideration for grant of relief was that, in one of the matters, payment was made by the

informant in that case to different accused than the Applicants herein. The additional reason was that the Applicant therein had deposited substantial amount before this Court. All these considerations are different from the facts in the present case and, therefore, that order will not make any difference to the decision of these Applications.

17. Considering the above discussion, the Applicants do not deserve the protection of order under Section 438 of Cr.P.C.. Consequently, the Applications are rejected. With the rejection of the Applications, Interim Applications for intervention do not survive and they are also disposed of.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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