



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 450 OF 2023

Shaikh Ahemad Sk. Mehaboob and another V/s State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.J. Thakkar, counsel for the applicants.

Mr. A.B.Badar, APP for the non-applicant/State.

Mr. N.B. Kalwaghe, counsel for Assist to Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/04/2024.

1. By this application, the applicants are seeking pre-arrest bail, in connection with Crime No. 466/2023 registered with Police Station Buldhana, District Buldhana, for the offence punishable under Sections 419, 420, 423, 467, 468 read with Section 34 of the Indian Penal Code, 1860 and Sections 11 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

2. The accusations against the present applicants is on the basis of report lodged by one Ravi Bhaskar Jadhav alleging that he has booked one flat bearing No. 201 admeasuring 80.66 Sq. Meter in Royal Apartment for a consideration of Rs. 17, 50,000/- and paid Rs. 50,000/- by way of a cheque and an amount of Rs. 1,00,000/- in cash to the applicants and one of the partners - Rajendra Jagtap. It is further alleged that the informant on 18/07/2017 paid a further amount of Rs. 12,15,000/- by way of a cheque. But due to the untimely

payment of installments and delay in payment of some of the customers, there was a delay in the completion of the project.

3. It is further submitted that the applicants entered into an agreement to sell the flats, but he has mortgaged the said flats with the bank and obtained the loan and not executed any sale-deed, in favour of the informant and other persons. On the basis of which, the crime is registered against the present applicants.

4. It is submitted by the learned counsel for the applicants that, at the most, the litigation between the present applicants, informant, and the other investors is of a civil nature. The informant can file suit for the specific performance. He submitted that their custodial interrogation is not required, as the entire case is based on the documents. In view of that, he prays for confirmation of the anticipatory bail granted to the present applicants.

5. Learned APP strongly opposed the application by stating that six persons were duped by the present applicants by executing the agreement to sell in their favour, and said flats which are agreed to the sale are mortgaged with the bank and the loan was obtained from the bank, and no sale-deeds are executed in their favour.

6. Learned counsel Mr. N.B. Kalwaghe for the informant has strongly opposed the said application and endorsed the same contention, and submitted that the sale-deeds are not executed in favour of the informant and the other persons, though they have paid the entire consideration

amount. In view of that custodial interrogation is required. He submitted that after obtaining the loan amount, the applicants have diverted the amount for their personal use and the informant and the other persons have at their own constructed the remaining portion of their flats. In view of that, application deserves to be rejected.

7. Having heard learned counsel for the applicant, informant and learned APP for the State, perused the investigation papers. It reveals from the investigation papers that the agreement to sell is executed by the present applicants in favour of the informant, but no sale-deeds are executed. Moreover, the said flats which are agreed to sell are mortgaged without intimating the informant and other persons who agreed to purchase the said flats, and the said amount was diverted by the present applicants.

8. Considering the entire allegations against the present applicants, admittedly the case revolves around the documentary evidence, custodial interrogation of the present applicants is not required. In view of that, the interim protection granted to the present applicants deserves to be confirmed on the similar terms and conditions imposed by this Court. Accordingly, I proceed to pass the following order:

- i] In the event of arrest, the applicant No.1 **Shaikh Ahemad Sk. Mahaboob** and No.(2) **Kashif Ahemad Shaikh** are released on anticipatory bail in connection with Crime No.466/2023 registered with Police Station, Buldana, District Buldana, for

the offence punishable under Sections 419, 420, 423, 467 and 468 read with Section 34 of the Indian Penal Code and Sections 11 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, on executing of P.R. bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

- ii] The applicants shall attend the Police Station as and when required for the investigation purpose.
- iii] The applicants shall furnish their cell phone numbers and address with the address proof, before the Investigating Officer.
- iv] The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

The criminal application **disposed of.**

[URMILA JOSHI-PHALKE, J.]