AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4094 OF 2024

Rajesh Amarsingh Rathod … Applicant

V/s.

The State of Maharashtra … Respondent

Mr. Vikram Tare Patil with Mr. Sachin N. Nangare for the applicant.

Ms. Supriya Kak, APP for the respondent-State.

Mr. J.D. Thakur, API, Bolinj Police Station, is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 21, 2025

P.C.:

1. By the present application filed under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), the applicant seeks his release on regular bail in connection with Crime Register No. 1080 of 2018 registered with Waliv Police Station for offences punishable under Sections 420, 465, 467, 468, 471, 474, 475 read with Section 34 of the Indian Penal Code, 1860 ("IPC" for short), and also under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ("MPID Act" for short), and Sections 3, 4, and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA" for short).

2. The prosecution case, in brief, is that the applicant and other co-accused obtained permission from the Gram Panchayat for construction of a building known as Shivdarshan only upto ground plus one floor. However, despite there being no permission for construction beyond that, the applicant induced the complainant and other witnesses to purchase flats on the third floor. It is alleged that the applicant sold those very flats on two occasions to the complainant in the present case, and for that purpose forged documents were prepared for registration of the agreements and for securing housing loans from Espier Home Finance Ltd. Till date, the building has neither been constructed nor has possession been handed over to the complainant. This led to registration of the present offence.

3. The learned Advocate appearing for the applicant contended that there was no dishonest intention since inception. He submitted that the allegations, even if taken at their face value, do not constitute the ingredients of the offences alleged. It was urged that the applicant has been in custody since 3rd April 2022, and that investigation has already been completed and charge-sheet filed. It is submitted that co-accused Rahul has been granted anticipatory bail by the Supreme Court, and therefore the applicant also deserves to be released on the ground of parity. It is further contended that continued incarceration of the applicant serves no fruitful purpose as trial is not likely to conclude in near future.

4. Per contra, the learned APP strongly opposed the bail application. She pointed out that it is the applicant himself who had induced the investors to book flats on the third floor onwards, though construction of such floors was never permissible by the Planning Authority. It was argued that acceptance of booking amounts for non-existent flats and thereafter executing multiple sale transactions in respect of the same unit shows dishonest intention right from the beginning of the transaction. The learned APP further submitted that forged documents were created by the applicant to deceive the investors and to secure housing loans from financial institutions. Despite assurance that the construction was 70% complete, no work was ever executed. The applicant even issued cheques towards repayment, which were dishonoured on presentation. The record also shows that the applicant mortgaged forged sale deeds with the finance company and obtained loans against non-existent flats.

5. The learned APP also contended that the role of the co-accused Rahul, who has been released on anticipatory bail, cannot be equated with that of the present applicant. While granting bail to Rahul, the Supreme Court took note of the fact that he was cooperating with the investigation. The role attributed to Rahul was limited to assisting investors in securing finance, whereas the main role of inducement, forging documents, mortgaging, and misappropriating the amount has been attributed specifically to the applicant. Thus, the principle of parity cannot be invoked in the applicant's favour.

6. It is further pointed out that the total amount involved in the present case is to the tune of ₹1,29,48,958/-, which is a substantial amount affecting multiple investors. Considering the gravity of allegations, the nature of evidence collected, and the modus operandi attributed to the applicant, it is submitted that he is not entitled to be released on bail at this stage.

7. I have carefully considered the submissions of both sides, perused the charge-sheet, and gone through the material placed on record. The allegations in the present case are not of a simple civil dispute between a builder and flat purchasers, but of a well-planned fraudulent scheme attracting the provisions of the IPC, MPID Act as well as MOFA.

8. From the record, it prima facie appears that the applicant induced investors to purchase flats on the third floor onwards, though the sanction granted by the Gram Panchayat permitted construction only upto ground plus one floor. In other words, the very foundation of the promise made to the investors was contrary to the lawful permission. The flat numbers mentioned in the agreements executed with the investors were thus never in existence in the eyes of law.

9. Despite having knowledge of this fact, the applicant not only accepted substantial booking amounts from the complainant and other investors, but also proceeded to execute agreements of sale in respect of such non-existent flats. The material further indicates that the very same units were sold more than once to different persons. Such conduct, in the considered view of this Court, goes far beyond the realm of a civil dispute or mere breach of contract.

10. A breach of contract normally arises where parties, having entered into a valid and lawful agreement, fail to perform their respective obligations. In contrast, in the present case, the applicant accepted money for flats which were never sanctioned and were incapable of being constructed as per law. The act of inducing investors to part with their hard-earned savings, fully knowing that such flats were not permissible to be constructed, reflects a fraudulent design and dishonest intention from the very inception of the transaction.

11. It is a settled principle that the presence of *mens rea* or dishonest intention distinguishes a case of cheating from a mere civil breach. Here, the sequence of events, accepting booking amounts for non-existent flats, executing multiple agreements for the same unit, and further mortgaging such flats to financial institutions, clearly indicates that the applicant never intended to honour the commitments made to the investors. Instead, the object appears to have been to wrongfully gain money at the cost of innocent purchasers.

12. Therefore, the material on record discloses that the actions of the applicant cannot be brushed aside as a simple commercial dispute, but prima facie constitute cheating and forgery, attracting the rigours of penal law.

13. Further, the prosecution has placed on record material to show that the applicant not only deceived the investors but also prepared forged documents to secure loans from financial institutions. The alleged mortgaging of non-existent flats, and obtaining finance by creating false documents, clearly demonstrates a larger conspiracy and misuse of trust. Even cheques issued by the applicant to assuage investors were dishonoured. The total amount involved in the crime is over ₹1.29 Crores, which shows the magnitude and seriousness of the offence.

14. The contention of the learned Advocate for the applicant that no dishonest intention existed since inception cannot be accepted at this stage. The sequence of events, namely (i) acceptance of consideration for flats not permissible under law, (ii) repeated sale of the same unit to different persons, (iii) creation of forged documents, and (iv) obtaining loans from financial institutions on the basis of such documents, prima facie establishes dishonest intention at the very inception of the transaction.

15. As regards the argument of parity with co-accused Rahul, I find substance in the objection raised by the learned APP. The Hon'ble Supreme Court, while granting anticipatory bail to Rahul, has specifically recorded that he was cooperating with the investigation and that his role was limited to assisting investors in obtaining loans. On the other hand, the principal role of inducement, execution of forged documents, and misappropriation of amounts is attributed to the present applicant. Therefore, the ground of parity is not available to the applicant. It is well settled that the principle of parity is applicable only when the role of co-accused is similar and not otherwise.

16. At this stage, the Court cannot lose sight of the object of the MPID Act, which has been enacted with the specific purpose of protecting depositors and investors from fraudulent financial establishments. The allegations in the present case strike at the very root of public trust and involve cheating of innocent investors of their life savings. Grant of bail in such matters, at a premature stage, is likely to erode public confidence in the justice delivery system.

17. The argument that the applicant is in custody since 3rd April 2022 and that investigation is complete also does not weigh in favour of granting bail. The gravity of the offence, the magnitude of cheating, the preparation of forged documents, and the possibility of tampering with witnesses or repeating similar fraudulent transactions are factors which outweigh the period of custody. The trial is at the stage of commencement and considering the number of witnesses and the nature of documentary evidence, it cannot be said that trial will be unduly delayed.

18. It is trite law that while considering bail in economic offences, the Court must take into account the seriousness of the charge, the nature of the allegations, the amount involved, and the impact on society at large. In *Nimmagadda Prasad v. CBI* (2013) 7 SCC 466, the Supreme Court has held that economic offences constitute a class apart and need to be visited with a different approach at the stage of bail, as they involve deep-rooted conspiracies and loss of public funds. The present case is squarely covered by this principle.

19. Having regard to the aforesaid facts, I am of the considered opinion that this is not a fit case where the applicant deserves the discretionary relief of bail under Section 439 of the Cr.P.C. The allegations disclose a systematic fraud, preparation of forged documents, and misappropriation of huge amounts from investors. The gravity of the offence, coupled with the possibility of influencing witnesses and tampering with evidence, disentitles the applicant from being released on bail at this stage.

20. The Bail Application stands rejected.

21. Accordingly, the bail application stands rejected.

(AMIT BORKAR, J.)