

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1840 OF 2015

Mirza Kauser Baig s/o Mirza Aziz Baig **APPLICANT**

V E R S U S

The State of Maharashtra & Anr. **RESPONDENTS**

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Mr. Shaikh Ashpak Taher Patel, Advocate
for Applicant.

Mrs. V.A.Shinde, A.P.P. for R – 1 State.

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CORAM : V.M.DESHPANDE, J.

DATE : 20th APRIL, 2015

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PER COURT :

1. By the present application, the applicant is seeking anticipatory bail since the applicant is apprehending his arrested in connection with Crime No. 29/2015 registered with police station Gangapur, district Aurangabad for the offence punishable u/s 420 of the Indian Penal Code.

2. Heard Mr. Shaikh Ashpak Taher Patel, learned counsel for the applicant and Mrs. V.A.Shinde, learned A.P.P. for respondent No. 1 – State.

3. Present applicant obtained loan in the year 2008 to the sum of Rs. 13,72,000/- from Central Bank of India,

Bajaj Nagar, Waluj M.I.D.C. At the time of obtaining said loan, one Munnawar Khan stood as guarantor and he has executed agreement in favour of bank. According to the prosecution case, said Munnawar Khan has mortgaged his property with the Bank.

4. According to the prosecution case, as it is reflected in the F.I.R. lodged by Pradipkumar Damodar Prasad Sinha, branch manager on 07/02/2015, since there was some default on the part of the present applicant in making repayment, it was noticed by the bank that the guarantor Munnawar Khan, without obtaining permission from the bank, has sold the mortgaged property to one Machhindra Kachru Zoje and, therefore, the offence is registered.

5. The applicant is borrower. His property was not mortgaged. The property of the guarantor is mortgaged in favour of the bank. F.I.R. does not disclose that the applicant was having any knowledge, when the guarantor has executed sale deed of the mortgaged property in favour of Machhindra Kachru Zoje. In that view of the matter, present applicant can not be held responsible for the acts done by the guarantor. In so far as the recovery of the amount from the present applicant is concerned, legal recourse is available to the bank. However, for that the bank can not resort to the criminal prosecution against the present applicant for the acts and misdeeds by the guarantor.

6. Hence, I pass the following order :

(i) Present Criminal Application is hereby allowed.

(ii) In the event of arrest, in connection with Crime No. 29/2015 registered with police station Gangapur, district Aurangabad for the offence punishable u/s 420 of the Indian Penal Code, applicant Mirza Kauser Baig s/o Mirza Aziz Baig be released on anticipatory bail on he executing P.R. Bond of Rs. 10,000/- [Rupees Ten Thousand] with one solvent surety of like amount.

(iii) Present Criminal Application is disposed of.

[V.M.DESHPANDE, J.]