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

CRIMINAL APPLICATION NO. 5311 OF 2015

Jagdish s/o Bhaiyalal Choundiye & anr.APPLICANTS

VERSUS

The State of MaharashtraRESPONDENT

Mr Vijay Sharma, Advocate for applicants;
Mr A. P. Basarkar, Addl. Public Prosecutor for respondent;
Mr R.S. Dhamangaonkar, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 28th October, 2015

ORAL ORDER :

By the present application, the applicants seek their release on pre-arrest bail, in connection with C.R. No.235 of 2015, registered with Police Station Sadar Bazar, Jalna, for offence punishable under section 420 read with sec. 34 of the Indian Penal Code.

2. The incident is alleged to have taken place between 2nd February, 2015 and 30th June, 2015, for which first information report has been lodged on 1st September, 2015. There is no explanation for delay in lodging the first information report.

3. It is the case of the prosecution that the applicants herein were contracted for the purpose of selling of plots, which are owned by the

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complainant, under various schemes and the applicants herein, while acting so, have received amounts from the various allottees, however, have not deposited the same in the account of the complainant – owner. It is also stated that the installments paid by the prospective purchasers are deposited by the applicants in their individual accounts and as such, have committed the offence in question.

4. Mr Sharma, learned Counsel appearing on behalf of the applicants, while trying to make out a case for grant of pre-arrest bail, would urge that first information report is arising out of the contractual obligation and in view of non-settlement of dues of the present applicants towards payment of brokerage charges. Apart therefrom, learned Counsel would urge that since the applicants have started their own business of plotting by leaving the work of the complainant, they are falsely implicated in the crime in question. According to him, settlement of accounts, *qua* payment due, could be decided in civil dispute and there is no scope for the applicants to run away from the process of law, as they are owning immovable property in the jurisdiction of the Court. He, therefore, prayed to grant pre-arrest bail to the applicants.

5. Learned Addl. Public Prosecutor, who is assisted by Mr R.S. Dhamangaonkar, learned Counsel appearing on behalf of the complainant, would urge that the preliminary investigation in the matter depicts that the applicants have received the amount of installments paid by the prospective purchasers/allottees of plots and have deposited it in their

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individual accounts, instead of transferring the same to the complainant, who is owner of the property. According to the learned Addl. Public Prosecutor, the conduct of the applicants amounts to duping the individual plot allottees and there is enough material available on record, including the extracts of accounts of the applicants herein, to demonstrate receipt of the amount by them from the various plot owners.

6. With the assistance of the learned Counsel appearing on behalf of the respective parties, I have perused the first information report, as also scanned the investigation papers.

7. Upon perusal of the first information report, it reflects that the complainant himself has come out with a case that the applicants herein were employed as brokers for selling the plots. Admittedly, the applicants are entitled for payment of brokerage, in case they sell plots to the prospective purchasers. Apart therefrom, the complainant has come out with a case that the applicants have stopped working for the complainant and have started their own business of plotting and selling the same to the prospective purchasers and as such, the applicants appear to have created competition to the complainant in his business of selling of plots.

8. Apart from above, the complaints made by the prospective buyer to the complainant herein, are required to be considered as an invited one, as the format of those complaints appears to have been prepared at one place and blanks have been filled in, so as to create evidence against the

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applicants. Thus, in the above background, possibility of false implication of the applicants in the crime in question, cannot be ruled out.

9. In view of above, in my opinion, the interim protection granted by this Court, in favour of the applicants, needs to be confirmed. I, therefore, pass following order :-

In the event of arrest of the applicants, in connection with C.R. No.235 of 2015, registered with Police Station Sadar Bazar, Jalna, for offence punishable under section 420 read with sec. 34 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

The applicants shall attend the concerned police station initially for three days, between 10.00 a.m. and 11.00 a.m. and thereafter as and when called by the Investigating Officer.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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