

Criminal Application No. 5087 of 2016

Zafar Khan s/o. Mohd. Isakh Khan,
Age : 38 years,
Occupation : Business,
R/o. Mastanpura, Nanded,
Taluka & District : Nanded. .. Applicant.

1. The State of Maharashtra,
Through Police Station,
Itwara, Nanded,
Taluka & District : Nanded.
2. The Commissioner of Police,
Nanded, District : Nanded. .. Respondents.

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Mr. S.D. Ghayal, Addl. Public Prosecutor, for
respondent nos.1 and 2.

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DATE : 30TH SEPTEMBER 2016

The applicant / accused in Crime No. 159/2015 for offences punishable under Sections 420, 467 and 468 of the Indian Penal Code, registered with

Itwara Police Station, Nanded, on the basis of report lodged by informant Mohammad Majhar Kureshi, by this application, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for applicant / accused as well as the learned Addl. Public Prosecutor appearing for respondents.

3. The learned Addl. Public Prosecutor argued that supplementary statement of the informant goes to show that the present applicant had also received some share in money received by co-accused Yunus Khan towards earnest for selling out the plot bearing No. 95 from City Survey No. 132A situated in Nanded-Waghala Municipal Corporation.

4. Perusal of the FIR shows that the informant had transacted with co-accused Yunus Khan and agreed to sell out plot No. 95 to him for a consideration of Rs. 5,25,000/-. It is reported that as an earnest, amount of Rs. 2,65,000/- was paid by the informant to Yunus Khan. But subsequently it was transpired that Yunus Khan was not the owner of the plot in question. So far as the present applicant is concerned, he is shown to be a mediator in the transaction between co-accused Yunus Khan and informant Mohammad Majhar Kureshi. In his first version about the offence, the informant has not ascribed any other role to the applicant than the role of mediator in setting the

transaction. In supplementary statement, as submitted by the learned Addl. Public Prosecutor, the informant came up with a stand that some of the amount paid by him to Yunus Khan went to the share of the present applicant. Prima facie that may be towards commission of the applicant for his act as a mediator in settlement of the transaction. The offence under Section 420 of the IPC requires intention to cheat since inception. Prima facie it is not shown that the present applicant was knowing that Yunus Khan is not owner of the plot in question.

5. In this view of the matter, custodial interrogation of the present applicant is not warranted.

6. Hence, I pass the following order :-

(a) The Application is allowed.

(b) The order dated 15.09.2016, granting ad interim anticipatory bail to the applicant, is confirmed on same terms and conditions.

(c) In addition, the applicant shall attend the concerned Police Station as and when reasonably called by the Investigation Officer for the purpose of investigation of the crime in question.

7. The Application stands disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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