

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.462 OF 2016

Shri Bharat Bhushan s/o. Omprakash ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr.D.R. Singh for Applicant
Mrs.P.P. Shinde, APP, for Respondent – State
Mr.D.R. Wadekar, PI, Charkop police station – present
Mr.Subir Kumar for Complainant resp. No.2

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **APRIL 4, 2016**

P.C.:

1. This application is moved for pre-arrest bail as the applicant-accused is facing charges under section 406, 420 r/w section 34 of the Indian Penal Code in C.R. No.9 of 2016 registered with Charkop police station at the instance of one Amul Navnitlal Raval on 7.1.2016.

2. It is the case of the complainant that he and his wife are Doctors. They knew one Mr.Vinod Bathia and his wife Harsha, who was an Anesthetist and Vinod Bathia, a Developer, represented in 2013 that he is having a construction company and he gave information about the booking of the premises in a proposed construction. It is the case of the complainant that he and his wife had booked flats and till 21.11.2013, they paid total Rs.52 lacs towards the flats. The accused Vinod Bathia told that he has started some new construction at Malad as the previous one was

not progressing. Applicant-accused Bharat Bhushan is the partner of accused Vinod Bathia. He requested them to pay him Rs.14,50,000/- by way of loan towards his new development project. The said amount was paid in installments by the complainant and his wife by cheques. Thereafter, again there was a demand of Rs.35 lakhs for the Malad project as advance payment. The said payment was made in favour of one KCD & Sidharth Life Spaces Private Limited. Thus, a total amount of Rs.1,01,50,000/- was paid by the complainant and his wife to Vinod Bathia and his company. The complainant and his wife thereafter found that no construction was going on and no proper answers were given by the applicants/accused and Vinod Bathia. It is the case of the prosecution that the applicant-accused is one of the Directors of the company and he has withdrawn Rs.8,06,000/- from the company account. Thereafter, the offence was registered and Vinod Bathia is absconding.

3. The learned Counsel for the Applicant has submitted that the applicant has paid a total amount of Rs.11 lakhs to the company. He relied on his bank statements. He further submitted that he has received the said amount of Rs.8,06,000/- towards repayment from the company. He submitted that the applicant/accused is innocent and he has committed any offence.

4. Learned Prosecutor as also the learned Counsel appearing for the complainant have opposed the application. It is submitted by the learned Counsel for the complainant that the applicant-accused is one of the Directors of the company to whom the total payment of Rs.101,50,000/- is made by the complainant. Thus, it is a joint liability of the applicant and his company as the applicant has promised the complainant about the booking and the house. He further submitted that it was binding on the part of the company i.e., the applicant-accused and other accused to enter into agreement of sale in respect of the premises which were booked as the amount paid was more than 20% of the consideration of the proposed flat.

5. Perused the FIR, the documents and the affidavits of the complainant and the applicant-accused. The complainant has paid the amounts by cheques. It prima facie shows that the complainant has been cheated by the company and especially by Mr.Vinod Bathia, the principal accused. The applicant-accused is one of the Directors of the company. The bank statement discloses that he withdrew the amount of Rs.8,06,000/-. It appears that the Directors of the company have failed to perform their statutory obligations under the Maharashtra Ownership of Flats Act. However, in view of these allegations and the nature of the offence and considering the submissions of the learned Counsel for the

parties, I am inclined to confirm the interim pre-arrest bail on the same terms and conditions with the following modification with regard to the attendance at the police station:

“The applicant-accused to attend the concerned police station on every Friday from 6 pm to 7pm for a period of one months from today or till filing of chargesheet, whichever is earlier”.

6. Anticipatory Bail Application stands disposed of accordingly.

(MRIDULA BHATKAR, J.)