

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1168 OF 2016

Mr. Ajay Kundan Tupe ... Applicant
Vs.

1.	The State of Maharashtra	
2.	Shri Sudhir Pandurang Rane	Respondents

Mr. Rajesh A. More, Advocate for the applicant.
Ms. Veera Shinde, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 3rd October, 2016.

P.C.

1. Heard. This is an application under Section 438 of Cr.P.C. The applicant herein apprehends his arrest in C.R. No.271 of 2015 registered at Hadapsar Police Station, Pune, on 5.6.2015 for the offences punishable under Sections 403, 406, 420, 467, 468, 471, 109 read with section 34 of IPC.

2. It is the case of prosecution that one Sudhir Pandurang Rane had filed a complaint before the Judicial Magistrate, First Class, Cantonment, alleging therein that the present applicant is a developer by profession and owns a construction company in the name of “Vedant Enterprises”. That the applicant herein had done plotting of Gat Nos. 248 and 249 of Village Sonari Taluka Purandar, Dist. Pune, to the extent of 30

Ares i.e. 30,000 sq. ft. That he had accepted part amount at the time of agreement for sale and it was agreed that rest of the amount would be accepted at the time of sale deed. That advertisement was given in the daily newspapers. The applicant had also shown plots which were made available for sale and the prices of the said plots were Rs.10 lakhs per Guntha i.e. 999 sq. ft. and advance of Rs.2 lakhs was received at the time of agreement for sale. It was also alleged that several people had purchased the said plots. The work had not commenced. The applicant had informed the purchasers that once the lay-out is accepted, he would commence work. It was subsequently revealed that the applicant had no title to the said plot. Moreover, it was an agricultural land and there was no application made for conversion of land to non-agricultural purpose and yet the plots were sold as N.A. plots. It was seen that the applicant was evading to answer to the purchasers. The applicant had also issued cheques to the purchasers after there was a lot of persuasions and the said cheques have been dishonoured. The complainant has also submitted that the police would not accept the report since it was in the nature of civil dispute and therefore he was constrained to file a complaint.

3. The learned counsel for the applicant submits that out of Rs.12,60,000/-, an amount of Rs.4,25,000/- has been repaid.

4. The papers of investigation would clearly reveal that even before advertisement, the applicant did not have a title to the said plot nor they were non-agricultural plots. It is clear that right from the inception, there was an element of cheating. The applicant was fully aware that he could not have sold the said property and yet had cheated the middle class persons who had hope of owning their new houses. Initiation of criminal proceedings is not for the purpose of recovery of the amount, It has become incumbent upon the Court to ascertain as to whether an offence was committed. The custodial interrogation of the applicant in such a case would become imperative.

5. In view of this, the application being sans merits, deserves to be rejected.

6. However, it is made clear that the observations made hereinabove are restricted to an application under Section 438 of Cr.P.C. and shall not be considered for the purpose of deciding an application under Section 439 of Cr.P.C.

The application stands rejected.

(SMT.SADHANA S.JADHAV, J.)