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FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTIONANTICIPATORY BAIL APPLICATION No. 1554 OF 2015
Ashraf Ahmed Majal Vs. The State of Maharashtra

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr Anoop Sharma a/with Prasad Apte i/by G.K.Tripathi, for the applicant.

Smt. M.H.Mhatre, APP for the Respondent-State.

Mr Dharam Sharma i/by Dharam & Co. for Respondent No.2.

CORAM : A.S.GADKARI, J.

DATE : 12th January, 2016

P.C.

1. The applicant is seeking pre-arrest bail in C.R. No. I-304/15 registered with MRA Marg Police Station, Mumbai dated 15.9.2015 under sections 406, 420 of IPC.

2. The FIR dated 15.9.2015 is lodged by Smt.Pinky Nawal Sharma stating that the applicant was a close friend of her husband. In the year 2010 she requested the applicant to search for a house for her in Mumbai and for that she paid him Rs.10,00,000/- each on two occasions in the office of the applicant. Though the applicant received the said amount of Rs. 20,00,000/-, he did not find out the house nor returned the amount of Rs. 20,00,000/- to her. When the complainant demanded the amount back, the applicant initially avoided to pay it on some or the other pretext. Subsequently, the

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applicant issued a cheque of Rs.20,000/- bearing No. 090112 on 1.11.2013. The complainant thereafter deposited the said cheque in her account at Central Bank of India, Cotton Branch and the same was dishonoured. The complainant, thereafter, confronted the said fact with the applicant upon which the applicant sought six months period to pay the amount. The applicant, thereafter, did not pay the amount of Rs. 20,00,000/- to the complainant. The complainant has specifically stated that, she being a widow, the applicant has taken undue advantage of the said situation and has committed the criminal breach of trust and also cheated her to the tune of Rs.20,00,000/-. In the premise the said FIR was lodged by her.

3. Heard the learned counsel for the applicant and the learned counsel for the original complainant. Perused the papers of investigation produced by the learned APP. The learned counsel for the applicant submitted that basically there is a civil dispute between the parties. The applicant herein has instituted a civil litigation against the complainant on the ground that though the complainant was not owner of the premises situated at Lucky House, the complainant used to demand maintenance amount and/or compensation for giving it on rent to the applicant. He drew my attention to the various documents pertaining to the litigation pending in the Small Cause Court at Mumbai.

4. A bare perusal of the FIR filed by the complainant makes it specifically clear that the complainant has paid a sum of Rs.20,00,000/- to the applicant as she was knowing him well, as the friend of her husband. She has categorically stated that the applicant assured her to find out home in Mumbai. However, by taking undue

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advantage of the situation the applicant though accepted the amount neither returned the same nor did find out a house for her. It further appears that the civil litigation pending between the parties has nothing to do with the amount involved in the present crime. It is to be noted here that the suit which is pending in the Small Causes Court at Mumbai is instituted by the applicant herein. As the subject matter involved in the said suit is subjudice, I do not wish to comment upon it. It is to be further noted here that the applicant being an educated person would not issue a blank cheque as contended by him for the amount huge of Rs.20,00,000/- to the complainant without there being any reason for issuance of the same. Prima facie I am of the opinion that the applicant has committed misappropriation of the amount given to him and has also committed the criminal breach of trust of the complainant. Prima facie, I find there is substance in the contention of the complainant.

5. Taking into consideration the serious allegations made against the applicant and gravity of the offence, I am of the opinion that this is not a fit case to exercise discretion in favour of the applicant thereby granting him pre-arrest bail. The application being sans of merit, is accordingly rejected.

(A.S. GADKARI, J.)