

*Ladda*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1562 OF 2015

Abdul Bashir Hamid Khan Vs. State of Maharashtra and Anr.

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 Imtiyaz Patel, for the applicant.
Smt. P.P.Shinde, APP for the State.
Mr Yusuf Khan for Intervener.

CORAM : A.S.GADKARI, J.
DATE : 12th January, 2016

P.C.

- 1) The applicant is apprehending arrest in C.R.No.432/2015 dated 25.11.2014 registered with Worli Police Station under Sections 406, 420, 120-B read with section 34 of the IPC.
- 2) The complainant Mr Abdul Moiz Abdul Aziz Khatri has lodged the FIR dated 25.11.2014 stating that the complainant was in need of residential premises. That his friend namely Ayyaz Khan introduced to him the applicant and one Mr Abdul Rashid Khan as builders. The complainant after believing in the preliminary talks visited the office of the applicant at Worli. The applicant represented the complainant that he is owner of two flats situate at Mazgaon and the cost of each flat is Rs. 65,00,000/-. It was also informed to the complainant that the said flats were in the name of Bashir Khan i.e. the applicant herein. After negotiations price of the said flat was

decided at Rs.62,00,000/-. When the complainant along with his father and uncle went to inspect the said flat at Mazgaon at that relevant time the applicant, Mr Rashidkhan (co-accused) Mr Nitin Gaikwad (co-accused) and other two persons who alleged to have been working with MHADA showed two flats to the complainant. In furtherance of representation made by the accused persons, the complainant decided to purchase flats No. 603 and 604 for total consideration of Rs.1,24,00,000/-. The complainant paid that amount by way of cheque and cash to the applicant and other co-accused. The complainant has further stated that the applicant herein did not give the possession of the said flats and on enquiry by the complainant used to dodge it on some or the other pretext the possession of the said flat. The complainant, thereafter, learnt that the applicant has also cheated many other persons in the said vicinity. In the premise the complainant lodged the FIR.

3) The learned counsel for the applicant submitted that the co-accused namely Nitin Gaikwad has been granted pre-arrest bail by this Court. The learned Counsel for the original complainant submitted that as far as the co-accused namely Nitin Gaikwad is concerned, the complainant has settled the matter out of Court with him after accepting the consideration of Rs.26,00,000/-, which amount, according to the prosecution was received by the said accused. The applicant had sought time to settle the matter with the complainant by making the balance payment. As far as the present applicant is concerned, he was also granted opportunity to settle the matter with the original complainant by making payment of deficit amount but he did not want to repay the amount and want to argue

the matter on merits.

4) In view of the same, I have heard the learned counsel for the applicant at length. I have also perused the documents annexed with the present application. I have also perused the papers of investigation. It is the specific and precise case of the complainant that he paid an amount of Rs. 82,00,000/- by way of cheque and an amount of Rs. 42,00,000/- in cash to the applicant and co-accused Abdul Rashid Khan. It is a matter of record that despite receipt of the said huge amount neither the applicant gave the possession of the agreed flats namely 603 and 604 situated at Mazgaon nor refunded the amount despite the repeated demands by the complainant. Prima facie it appears that the applicant in a well designed manner has committed the criminal breach of trust of the complainant and has also committed offence under sections 406, 420 read with section 120-B of the IPC. It appears from the record that the applicant since inception had ill motive to cheat the complainant and never wanted to hand over the possession of the said two flats.

5) After taking into consideration the serious allegations, gravity of the offence and the fact that the applicant is also involved in two other cases of similar nature registered with Worli Police Station, I am not inclined to exercise the discretionary jurisdiction of granting pre-arrest bail to the applicant. The application being sans of merit, is accordingly rejected.

(A.S. GADKARI, J.)