

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APPP] No.903 of 2016
in
Criminal Application [ABA] No.347 of 2016

(Vijay s/o Shankarrao Talewar

vs.

State of Maharashtra, through P.S.O. Crime Branch, Nagpur)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders

CORAM : **S.B. SHUKRE, J.**
DATE : **26th SEPTEMBER, 2016.**

Heard Shri R.K. Tiwari, learned Counsel for the applicant/complainant.

For the reasons stated in the application, the application is allowed. Leave to assist the prosecution is granted.

Criminal Application [ABA] No.347/2016 :

Heard Shri Sunil V. Manohar, learned Senior Counsel for the applicant, Shri V.P. Gangane, learned A.P.P. for the State, who is assisted by Shri R.K. Tiwari, learned Counsel for the complainant.

Perused the F.I.R. and the reply of the prosecution and also the documents placed before me with the assistance of the learned A.P.P. and the learned Counsel for the complainant.

It is seen from the F.I.R. that the allegation of cheating is primarily based upon the agreement to sale

entered into between the complainant and the applicant in the month of August, 2011. As per complainant's case, there was an oral agreement. Admittedly, the terms and conditions of this oral agreement as well as the particular date of the oral agreement have not been disclosed by the complainant to the Investigating Officer. The F.I.R. also does not disclose these terms and conditions. It is not known as to within what time the sale-deed was to be executed by the applicant. Yet, it is surprising that the complainant paid huge amount of Rs.5,05,89,500/- during the period from 11/12/2011 to 07/07/2012. All these payments have been made through the R.T.G.S. mode. The applications filled up by the complainant for making payments by resorting to R.T.G.S. method *prima facie* show that all these payments were towards “development of purchase land” in Nagpur. There appears to be no congruity between “development of purchase land” and the allegation made in the F.I.R. that believing in the false representations made to the complainant by the applicant that the applicant was the authorized person to sell the land, the complainant parted with such huge sum of money in order to purchase the land. The agreement was for purchase of the land and not for its development. So, the contention that payment was for development of land does not match with the submission that it was towards purchase of land. Then, no explanation regarding delay in filing of the F.I.R. by the complainant has been given. After the last payment was made on 07/07/2012, which made the total payment swell to more than Rs.5.00 crores, no person of ordinary prudence in such a situation would have chosen to be inactive and remain satisfied with some correspondence with a person to whom such huge amount has been paid. But, that is a fact, the F.I.R. has been

filed after almost 4 years thereafter, without any such explanation as would appeal to any logical mind at the first blush. It appears that the nature of transaction between the complainant and the applicant may possibly not to be the one as has been alleged in the F.I.R. It could be of entirely different nature and this other possibility has not been ruled out in this case. Therefore, I am of the view that the applicant, at this stage, is entitled to be released on bail. Hence, the order.

The application is allowed. The interim anticipatory bail granted to the applicant by this Court on 7th June, 2016 is hereby confirmed on the same conditions, except the condition of daily attendance and now the applicant shall attend the police station as and when required.

The application is disposed of in these terms.

*sdw

JUDGE

C E R T I F I C A T E

I certify that this order uploaded is a true and correct copy of the original signed order.

Uploaded by : S.D. Waghmare
P.A. to the Hon'ble Judge.

Uploaded on : 27/09/2016