

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

6 CRIMINAL APPLICATION NO. 1297 OF 2017

SAYYAD JAMAL SAYYAD GULAB AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

Shri. Mobin H. Shaikh, Advocate, for applicants.

Shri. V.S. Badakh, Additional Public Prosecutor, for
respondent.

Coram: T.V. NALAWADE, J.

Date: 16 March 2017

ORDER:

1) The application is filed for grant of relief of anticipatory bail. Both the sides are heard.

2) The complainant has made allegations against the present applicants that they acted as agents for selling his landed property which was Plot No.18 from Gat No.27 situate at Shahajatpur Naregaon, Tahsil and District Aurangabad. It is the contention of the complainant that the plot was sold to one Shaikh Azhar Shaikh Mazhar for consideration of Rs.6.50 lakh and at the time of the

transaction amount of Rs.1.50 was paid and the remaining amount was to be paid subsequently, on or before 10 March 2016. Sale transaction took place on 9 December 2015. It is the contention of the complainant that present applicants, who were agents, had promised to see that remaining amount is paid by the purchaser, Shaikh Azhar in time but this promise was not kept. It is contended that the purchaser sought time of six months and when the complainant approached the present applicants they also gave one or the other excuses and avoided him. Allegations are also made that he was virtually assaulted by the applicants and he was driven out of the house by the agents.

3) The contentions if they are accepted as they are in the F.I.R., it can be said that there was sale transaction between the complainant and Shaikh Azhar and for that present applicants had acted as brokers. They did receive commission for this work but the amount was to be paid by Shaikh Azhar. It appears that the complainant had given time to Shaikh Azhar till 10-3-2016 but before that date Shaikh Azhar did not make payment and due to that

the complaint came to be given against the present applicants.

4) It is surprising that the complainant is not pressing the demand against Shaikh Azhar but he is pressing the demand against the present applicants, who were the brokers. If at all there was some promise, it can be said that there is breach of the contract and for that there is separate remedy available. It can be said that by using criminal action the complainant is trying to recover the money from the present applicants. This cannot be done.

5) In the result, the application is allowed. In case of arrest of the applicants in Crime No.50/2017 registered in Jinsi Police Station Aurangabad for offences punishable under sections 420, 406, 323, 504, 34 of the Indian Penal Code they are to be released on bail on their furnishing PR and SB of Rs.25,000/- (Rupees fifteen thousand) by each of them. They are not to tamper with prosecution witnesses. They are not to commit similar offences. They are to attend the concerned police station on every

Sunday for the period of one month between 9.00 a.m. and 12.00 noon and they are to cooperate police during investigation.

Sd/-
(T.V. NALAWADE, J.)

rs1