

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.36 OF 2017**

Vijay Somdat Nagpal

.... Applicant

versus

The State of Maharashtra

... Respondent

Mr.Akhilesh Dubey, Advocate a/w Mr.Vagish Mishra, Advocate  
a/w Paritosh Shukla, Advocate i/b. Law Counselors for the  
Applicant.

Mrs.N.S. Jain, APP for the State/Respondent.

**CORAM : MRS. MRIDULA R. BHATKAR, J.**  
**DATE : 25<sup>th</sup> JANUARY, 2017.**

**P.C. :**

1. This application is moved for pre-arrest bail. The applicant/accused is prosecuted for the offences punishable under sections 420, 406 r/w 34 of the Indian Penal Code and section 13(1) of Maharashtra Ownership of Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (MOFA) at C.R.No.203/16 at Khandeshwar Police Station.

2. It is the case of complainant Toniel Raman Unni

Nesarikar

Manoharan Nair that in the year 2013 he came across one advertisement of the flats in project by name Sunflower, which is launched by one M/s S.V. Associates at New Panvel. He met one Sapan Naskar, i.e. the co-accused in the office of the firm and relying on the information disclosed by co-accused Sapan Naskar, the complainant booked flat No.603 in the said building in his name and in his wife's name. He gave cash of Rs.8,50,000/- at the time of executing agreement for sale dated 16/08/2013. He issued cheque in the name of applicant/accused Vijay Nagpal and Sapan Naskar. The complainant paid the total amount of Rs.37,50,000/- to the builder. They were credited in the joint account of the applicant/accused and Sapan Naskar, by name GIC Finance in Vijaya Bank. However, he did not get possession of the flat and therefore he continuously used to meet Sapan Naskar for the same. However, he gave evasive answers. Sapan Naskar agreed to pay interest amount on the home loan which he had taken and gave undertaking to that effect on 06/06/2016. Sapan Naskar thereafter gave Rs.3,10,000/- to the complainant. However, did not pay any further amount. On enquiry the complainant found that the said

flat No.603 was first sold by the firm to third party i.e. Nagle thereafter it was sold to Jitendra Tanna and thereafter to the complainant. Thus, the applicant/accused alongwith co-accused Sapan has cheated the complainant. Hence, he approached to the police and gave information on 29/10/2016. Pursuant to which the offence was registered at C.R.No.203/16 at Khandeshwar Police Station, New Mumbai.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused admits that he was a partner in the partnership firm of M/s S.V. Associates, Builders and Developers. The plot under the project Sunflower was purchased jointly by the applicant/accused and Sapan Naskar. It is further argued that however the applicant/accused gave resignation on 31/03/2012 and on 13/03/2013 the deed of dissolution was executed between Sapan Nasakar and the applicant/accused, which is post dated effected from 31/03/2012. It is submitted that thus the applicant/accused has resigned from the firm prior to the date of the registration of agreement of sale i.e. 16/08/2013. He is

not beneficiary of this money. It is further argued that the applicant/accused himself is cheated by Sapan Naskar. The learned counsel for the applicant/accused submitted that by way of full and final settlement of accounts, Sapan Naskar had issued four cheques i.e. two cheque for Rs.50,00,000/- and two cheques for Rs.20,00,000/- each consisting total Rs.90,00,000/- total in favour of the applicant/accused. However, those all cheques were dishonoured and thus he did not get any money as a share of the dissolution of partnership. The learned counsel further submitted that he never had participated in the sale of the flat and has not committed any offence.

4. The learned prosecutor while opposing bail application has submitted that the applicant/accused was the partner of the said firm and said flat was sold thrice and the complainant and other persons were cheated by the partnership firm. She further submitted that the police have collected some information from the bank that a joint account in the name of co-accused Sapan Nasakar and the applicant/accused was opened in Vijaya bank. All

the cheques were deposited in those banks. There is also evidence to show that some amounts were transferred from the joint account to the account in HDFC Bank, which stands in the name of applicant/accused alone.

5. Considered the submissions made by both the counsel, I have perused the FIR. So also the documents which are produced herewith. It is the fact that the applicant/accused was having partnership firm with one Sapan Naskar. However, after going through the complaint, prima facie no specific role is attributed of contacting and inducing the complainant to purchase the flat No.603 by the applicant/accused. It appears from the complaint that, the person to whom the complainant had met and at whose promise and representation the complainant parted with the money, is Sapan Naskar.

6. In view of these submissions by learned counsel for the applicant/accused and in view of the deed of dissolution and also the fact that four cheques given by co-accused Sapan Naskar to the

applicant/accused were dishonoured, I am inclined to allow this application with the following terms:

**ORDER**

- (i) In the event of arrest, the applicant/accused shall be released on bail on furnishing P.R. Bond in a sum of Rs.25,000/- with one or two solvent sureties in the like amount.
- (ii) The applicant shall not interfere in the investigation and shall not pressurize the witnesses.
- (iii) The applicant shall attend the concerned police station as and when called.
- (iv) The applicant shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.
- (v) The applicant shall not have any kind of association with co-accused Sapan Naskar.

(vi) The applicant shall not create any offence especially offence of similar nature.

7. The application is disposed of in above terms.

**(MRS. MRIDULA R. BHATKAR, J.)**