

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 139 OF 2017

Hanumant Pandurang Chavan. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Dilip Bodake, advocate for Applicant.

Mr. M.G. Patil, APP for State.

Mr. S.S. Hire, API, Vashi Police Station.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 16, 2017**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 11 of 2017 registered at Vashi Police Station for offence punishable under section 420 and 406 of the Indian Penal Code.

3 It is the case of the prosecution that on 6/1/2017 Shahaji Sargar lodged a report at the police station alleging therein that he desired to have his own house and he was informed by a relative about the project, which is floated by the present applicant. Accordingly in the year 2012, he had approached the applicant and has made proper enquiry of the project named Sairaj Niwara at village Derwali, Palspe, Taluka Panvel. He was informed that rate per square foot is 2850/- and the flat would cost him Rs. 10,26,000/-. The applicant had executed an agreement on 21/10/2012. The complainant had made payment by cheque. Several people had booked the flats in Sairaj Niwara. He has mentioned the details in the first information report. He had paid Rs. 3,08,598/- by way of cheque and cash. The complainant kept on persuading the applicant. The applicant had issued the cheques. When the cheques were presented for encashment, they were dishonoured. The applicant was evading to answer the complainant and therefore, the

complainant was constrained to lodge the FIR against the applicant as he had realised that he has been cheated by the applicant.

4 The learned Counsel for the applicant submits that he had prepared a demand draft in favour of the complainant on 2/1/2017. However, without collecting the said demand draft, he had chosen to lodge the FIR. It is further submitted that the complainant had voluntarily withdrawn from the project.

5 It is pertinent to note that it is not just the complainant, but several other persons, who had booked their flat in Sai Niwara. It is further pertinent to note that till today the construction is at plinth level. The applicant has floated projects such as Sairaj, Sai Nivara, Sai Exotika, Golden Impress, Sairaj Landmark, Golden view etc. and all the projects are incomplete.

6 The learned APP has filed a report stating therein that Investigating Officer has called upon the list of the person who had

booked their flats in the projects floated by the applicant. However, there is no cooperation.

7 The learned Counsel for the applicant vehemently submits that the applicant has no intention to cheat any of the persons, who had booked their flats, but due to peculiar difficulties in the Government and CIDCO policies, the project could not be completed. Learned Counsel for the applicant has submitted that the applicant had never informed the persons who had booked flats about the difficulties.

8 The complainant has specifically stated that initially he had been given cheques which were dishonoured and only when the applicant had learnt that the complainant is likely to approach the police station, he had prepared the demand draft. It is submitted that the construction of the project is stalled due to the circumstances, which are beyond control of the applicant, as the Government has stayed the development project for the implementation of new development control regulations by CIDCO and NAINA.

9 The learned APP upon instructions submits that none of the project have requisite clearance from the authorities, which is meant for developing the project. It is in these circumstances that it can be inferred that the applicant had an intention to cheat the person, who had booked the flats, as they were never apprised of the possible difficulties or the difficulties in existence. Hence, this is not a fit case for grant of pre-arrest bail, as several people have been cheated.

10 The application being sans merits stands rejected. In the eventuality the applicant files application under section 437 or 439 of the Code of Criminal Procedure, 1973, the concerned court shall not be influenced by the observations made herein above.

11 The Application stands disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)