

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

ANTICIPATORY BAIL APPLICATION NO.1143 OF 2017

Rajiv Arvind Gandhi & Ors.	..	Applicants
Vs.		
State of Maharashtra & Anr.	..	Respondents

Mr.S.M.Gorwadkar, Senior Counsel i/by Mr.Niranjan A. Mogre for the applicant.

Mr.S.S.Hulke, Additional Public Prosecutor for the respondent no.1.

Mr.S.H. Nimbalkar for the respondent no.2.

CORAM : T.V. NALAWADE, J.

DATE : 21st August 2017

P.C. :

1. The application is filed for relief of the anticipatory bail in C.R. No.145 of 2017 registered in Chaturshrungi Police Station for the offences punishable under Sections 420, 406 of the Indian Penal Code. few provisions of Maharashtra Ownership Flat Act, 1963. Both the sides are heard. Papers of investigation were made available for perusal of this Court.

2. Learned counsel for the applicant also produced some record to show that the applicant has filed similar reports against other builders and developers also.

3. A crime is registered on the basis of report given by Anil Kishanlal Marda. He has made allegation that in the year 2003, he purchased in all seven flats from the present applicants, builders and

developers by making total payment of Rs.1 crore 15 lakh and even possession of these flats was given. According to him, he had made investment and so he did not show interest to immediately dispose of the properties and deal with the properties. According to him, when subsequently, he went to the flats which were purchased by him, he noticed that some other persons were occupying the flats. According to him, the present applicants represented that they had kept those persons in the flats as tenants and they would be paying rent to the first informant. He has contended that in the year 2013, as a part of the payment of rent, 8 cheques of Rs.20 lakh were given to him but all the cheques bounced. So he approached the police. The records like agreements for sale, possession receipts and copies of receipts of payment are produced and even the record of various permissions obtained by the present applicants for development of the property is produced.

4. Learned counsel for the applicants submitted that these are only the zerox copies and the applicants are not admitting this records. This submission is not at all acceptable. Learned counsel for the applicants submitted that if the agreements were made in the year 2003, it was necessary for the first informant to explain as to why till 2017, he did not approach the police. The contentions already mentioned are sufficient in this regard. The record produced by the applicants show that the applicants are not disputing that they had dealings with the first informant. If they are admitting that there were some transactions then at this stage, it cannot be said that the records produced by the first informant is false. Learned APP submitted that original documents are with the informant.

5. Learned counsel for the applicants submitted that the present record is not signed by the witnesses. This circumstance is against both the applicants. The first informant could have created false record which include the signatures of the witnesses but that was not done.

6. Submission made and record show that after handing over the possession of the flats, the applicants disposed of the said flats. It can be said that the circumstance that there are only the agreements made in favour of the first informant and those agreements are not registered is misused by the present applicants. In those years, such agreements were being executed.

7. Submission of the learned counsel for the applicants is that the originals are not produced to make out a prima facie case. Learned counsel for the APP submitted that the original record is with the complainant. Investigating agency must have verified the original record.

8. The record is sufficient to infer that after accepting the consideration and giving possession of the seven flats, the present applicants disposed of the said flats in favour of the third party. This conduct is not separate from the offence of cheating. This conduct cannot be only simple breach of agreements or civil wrong. On this point, learned counsel for the applicants placed reliance on the decision of the Apex Court in the following two cases :-

- (i) ***Dalip Kaur & Ors. Vs. Jagnar Singh & Anr. (2009) 14 SCC 696;***
- (ii) ***Murari Lal Gupta Vs. Gopi Singh, (2015) 13 SCC 699.***

9. The facts and circumstances of the each and every case are different. The relevant facts of the present case are already quoted. In view of the circumstances, protection cannot be given to the present applicants. The amount of Rs.1 crore was taken by the present applicants and then the conduct of the applicants is of the aforesaid nature. The contention of the applicants that it was non-accounted money of the informant is the matter of investigation by the police. Custodial interrogation is necessary which may reveal more instances which will help the police to collect more record. So the application is rejected. Interim relief granted earlier stands rejected.

10. When the order was declared, the learned counsel for the applicants requested for continuation of the interim relief for some time as they want to approach the Hon'ble Apex Court. It is refused.

T.V. NALAWADE, J.