Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1881 OF 2016
WITH
CRIMINAL APPLICATION NO.958 OF 2016

Deepak Pandurang Pawar ...Applicant.
vs.
The State of Maharashtra ...Respondent.

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Mr.A.P. Mundergi, Sr.Counsel with Mr. Abhishek Yende for the Applicant.
Mrs. J.S.Lohokare, APP. for the Respondent-State.

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CORAM :A.S.GADKARI, J.
DATE : 20th April, 2017

P.C.

1) The applicant is apprehending arrest in CR No.367 of 2016 dated 28.7.2016 registered with Malad Police Station, Mumbai under Section 420 of the Indian Penal Code and under Section-3, 4 and 13 of the Maharashtra Ownership of Flats Act.

2) The first information report is lodged by Shri. Rajinder Rishi. It is stated that the applicant by accepting valuable consideration agreed to sell flat Nos. 1901 and 1902 situated on 19th floor of the building namely Deepak Heights, Malad (W), Mumbai which was represented to be constructed by the applicant in SRA project. As the applicant failed to perform his part of obligation and to comply his promise, to give the

possession of the said flats, the applicant further promised him to give two additional flats bearing No.701 and 705 in the same building. The applicant further accepted Rs.2.75 crores from the first informant for the same. The applicant thereafter convinced the first informant to become a partner in the development of properties business and accepted additional amount of Rs.2.75 crores. The said additional amount of Rs.2.75 crores was accepted to develop the property named as Likhite House situated at at Mahim(W), Mumbai. As the applicant failed to give the possession of the aforestated four flats and also to return the money accepted by him, after lot of persuasion by the first informant the applicant issued post dated cheques in favour of the first informant. The said cheques were dishonoured on presentation. The applicant thereafter informed the first informant that he will purchase his share in the project of Likhite House at a cost of Rs.15.00 crores and he further gave two more cheques amounting to Rs.15.00 crores. Those two cheques were also dishonoured on presentation. The first informant initiated proceeding under Section 138 of the Negotiable Instruments Act before the Court of competent jurisdiction. The applicant thereafter entered into an alleged settlement with the first informant. The applicant thereafter represented the first informant that he will allot 11 flats in Deepak Heights and one flat in his project Shanti Suburbia situated at Malad to the first informant and MOU was accordingly entered into. As the applicant failed to honour that commitment also he further entered into a modified MOU which was subsequently executed and in pursuance thereof the applicant gave four cheques amounting to Rs.7.35/- crores to the first informant. It is the specific allegation of the first informant that those cheques are also dishonoured on presentation. It is the specific allegation against the applicant that the applicant by representing the first informant that he will give him residential premises in the said project accepted huge amount and did not give the said premises and the cheques which were issued towards the repayment of the said amount have been dishonoured on presentation. It is therefore, stated that the applicant has cheated the first informant to the tune of Rs.5.83 crores. In the premise, the first information report is lodged.

3) Heard the learned Senior counsel for the Applicant, counsel for the original complainant and the learned APP and also perused the record of the investigation.

4) Mr. Mundergi, the learned Senior counsel for the Applicant submitted that from the recitals of the first information report it would reveal that the applicant was an investor in his project and not a bonafide flat purchaser. He submitted that the present transaction is a commercial transaction and for failure to perform part of the contract by the applicant, the criminal proceedings cannot be

initiated. He further submitted that the applicant has already adopted the proceedings under Section 138 of the Negotiable Instruments Act and they are subjudice and therefore, custodial interrogation of the applicant is not necessary. He therefore, prayed that the applicant may be granted pre-arrest bail.

5) At the out set, it is to be noted that the proceedings under Section 138 of the Negotiable Instruments Act are distinct and separate from the offence punishable under Section 420 of the I.P.C. After perusal of the first information report it clearly appears that the applicant since inception was having intention to commit the offence of cheating. The record clearly revels that the applicant never had commencement certificate with respect of the said building namely Deepak Heights and he was having having permission to construct rehabilitation component of the SRA project. The record of investigation further reveals that as of today there are three other witnesses who have filed complaints with the Economic Offence Wing alleging that the applicant has accepted huge amount from them with promise to give residential flats in the building known as Deepak Heights however, neither gave possession of flats nor repaid the amount. As stated earlier the investigation carried out till date clearly reveals that the applicant since inception was not having commencement certificate or any other permission to construct the building Deepak Heights and despite the fact

he represented and promised the first informant and other witnesses that he will sell the said flats to them and have accepted huge amounts from the said persons. It is further to be noted here that after the applicant realized the fact that he failed to perform part of his contract, the applicant has dishonestly given negotiable instruments in favour of the first informant, which on presentation has been dishonoured. Thus, prima facie, it clearly reveals that the applicant was never having intention to perform his part of obligation and only with a view to cause wrongful loss to the first informant has accepted huge amount from him. It further appears that the applicant by adopting deceptive method has instigated the informant to part with the huge amount. In view thereof, this Court is of the view that the applicant does not deserve to be protected by grant of pre-arrest bail.

6) After taking into consideration the serious allegations against the applicant and the gravity of the offence, this Court is of the view that the applicant does not deserve to be granted pre-arrest bail.

7) Application is accordingly rejected.

8) In view of the order passed in ABA No.1881 of 20916 the present application does not survive and is accordingly disposed off.

9) At this stage, the learned counsel for the applicant submitted that his client is intending to test the correctness of the present order before the Apex Court and

therefore the interim order granted by this Court may be continued for a period of two weeks from today. At his request, interim relief granted by this Court is hereby extended by three weeks from today.

10) In view of the order passed in ABA No.1881 of 2016, the Criminal Application No.958 of 2016 does not survive and is accordingly disposed off.

(A.S.GADKARI, J.)