

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO.847 OF 2018**

Murtuza Yusuf Electricwala

¼.Applicant.

Vs.

The State of Maharashtra

¼.Respondent.

Mr.S.I. Kantharia, for the Applicant.

Mr.Ameet Palkar, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 7th JUNE, 2018.

P.C.:-

1) This is an Application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in C.R. No. 63 of 2018 dated 12.03.2018 registered with Byculla Police Station, Mumbai under Sections 420 r/w. 34 of the Indian Penal Code.

2) Heard the learned counsel for the applicant and the learned APP for the State. Perused the record of investigation.

3) It is stated that the applicant along with other accused persons formed a trust by name ^aJagrut Samaj Ekta Foundation Trust^o. It was thereafter advertised in the year 2011 that, the applicant/accused is promoting a housing project at Boisar (East) by

name Mohammedi Colony Project at Boisar (East) for the needy people of Bohari Muslim community. The first informant made a payment of Rs.2,93,000/-to the applicant from time to time and last such payment was made in the year 2013. As the applicant failed to deliver possession of the agreed flat within stipulated period, the first informant approached the applicant for return of money. The applicant on some or the other pretext avoided to make repayment of the said amount. The applicant neither gave possession of the flat nor returned the amount till 12.03.2018. The first informant therefore realized that he has been cheated by the applicant. It also came to the knowledge of the first informant that there are about 13 such other persons, whose names are given in the First Information Report.

4) The learned counsel for the applicant submitted that the applicant had no intention to cheat the persons, who had booked the flats in the project by name Mohammedi Colony at Boisar (East) and he was in fact legally bound to deliver possession of the flats to the concerned investors. However, due to opposition from the local persons for constructing the said project at Boisar (East), he could not start the said project. It is submitted that the applicant is having bonafide intention to complete the said project and hand over

possession of flats to the concerned persons. Due to the circumstances, which are beyond the control of the applicant, he could not complete the project, however, he will complete the project and give possession of the said flats to all the concern persons. He, therefore prayed that he may be granted pre-arrest bail.

5) The record of investigation discloses that after receipt of complaint the police had conducted preliminary inquiry and in the said inquiry the applicant has given a statement that he has accepted money from more than 300 persons. He has further stated that out of the said 300 persons, 65 persons have cancelled the booking of flats. The record is silent about the fact whether the applicant has returned the amount accepted by him to the concerned persons or not.

6) It is to be noted here that the applicant lured economically middle class people by projecting a rozy picture of giving them residential premises at reasonable costs and collected money from them. Despite the fact that the applicant could not complete the said project in last more than 4/5 years, he has failed to return the amount to the concerned persons. As per the record of investigation, there are approximately 300 persons, who have been cheated by the applicant by adopting the said modus operandi as has been stated in the FIR.

The material available on record indicates clear complicity of the applicant in the present crime. The investigation of the present crime is at crucial stage and unless and until the applicant is thoroughly interrogated, the entire truth behind the crime cannot be unearthed.

7) After taking into consideration the aforestated facts, 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 protected by way of pre-arrest bail.

8) Application is accordingly rejected.

(A.S. GADKARI, J.)