

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 884 OF 2018**

Dinesh Ramesh Uphale

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. A.R. Shaikh with Viral Rathod i/by Harshad E. Palwe for the Applicant.

Ms. A.A. Takalkar APP, for the Respondent-State.

Mr. Mahendra Baburao Wagh, (API), Kharghar Police Station, Navi Mumbai, present.

CORAM : A. S. GADKARI, J.

DATE : 8th JUNE, 2018.

P.C.:-

This is an Application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in CR No. 81 of 2018 dated 24th February, 2018, registered with Kharghar Police Station under Sections 383, 406, 500, 504, 506, 420 r/w Section 34 of the Indian Penal Code.

2 Heard the learned counsel appearing for the Applicant and the learned APP. Perused the record.

3 The First Information Report is lodged by Shri. Prakash

Tukaram Gaikwad. It is stated that the Applicant is his close friend. That, the Applicant expressed his financial difficulties from time to time and on one or the other pretext, made the said first informant to pay a sum of Rs.9,03,000/- to him. It is stated that, the said amount has been paid either by way of cheques or cash. The first informant has further stated that, the Applicant subsequently lured the first informant for purchase of land at Village Torkewadi, Taluka Sudhagad, District Raigad and for that purpose further accepted a sum of Rs.4,00,000/- from him. The Applicant, thus has made the first informant to pay a total sum of Rs.13,53,000/- for some or the other reason. The Applicant did not give possession of the said piece of land with clear title and also did not repay the amount accepted by him from time to time as loan. In the premise, the first information report is lodged.

4 The learned counsel appearing for the Applicant submitted that, there is a delay in lodging the first information report. He further submitted that the Applicant is denying the fact of accepting any loan amount from the first informant. He further submitted that, the Applicant never lured the first informant to purchase the said piece and parcel of land at village Torkewadi, Taluka Sudhagad,

District Raigad. He further submitted that, the transaction between the Applicant and the first informant pertaining to the said piece of land is of Civil nature and therefore, the custodial interrogation of the Applicant is not necessary. He, therefore, submitted that the Applicant may be protected by pre arrest bail.

5 As stated in the first information report, the Applicant has executed an Affidavit dated 19th October 2013 admitting his liability. The Affidavit is an elaborate affidavit wherein, the amounts received by cheque by the Applicant from the first informant has also been mentioned. The said affidavit is duly notarized before Advocate Shri S.T. Bhoir of Thane. The investigating agency has recorded the statement of the said Notary wherein, he has stated that the Applicant and the first informant had been to him for executing the said document and the Applicant has executed the same at his own free will.

6 In view thereof, it *prima facie* appears that the defence adopted by the Applicant that he never executed the said document is bogus and sham defence and the same needs to be discarded at its inception. After perusing the FIR and other documents, it clearly appears to this Court that, a strong *prima facie* case against the

Applicant is made out by the prosecution. There is sufficient material on record to denote the complicity of the Applicant in the present crime.

7 The Investigating Officer Shri Mahendra Wagh has filed an Affidavit dated 14th May, 2018 placing on record the fact that the Applicant is also an accused in two other crimes of similar nature committed by adopting similar modus operandi, which are bearing CR No. 204 of 2014 registered with Khopoli Police station, District Raigad under Sections 420 and 406 r/w Section 34 of the Indian Penal Code and CR No.13 of 2009, registered with Pali Police Station, District Raigad under Sections 420, 465, 467, 468, 471 r/w Section 34 of the Indian Penal Code. The learned counsel appearing for the Applicant submitted that, the Applicant has been acquitted from the offence bearing CR No. 13 of 2009. Assuming that the said fact is true, then also it denotes the inclination of the Applicant towards criminality. In view of the fact that the Applicant was earlier involved in two crimes of similar nature, a safe inference can be drawn that the Applicant is a habitual offender.

8 After taking into consideration the material available on record, 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 protected by pre-arrest bail.

9 Application is accordingly rejected.

(A.S. GADKARI, J.)