

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1102 OF 2018

Sandeep Mansing Kadam

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. Vijay Killedar for the Applicant.

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

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. I-254 of 2017 dated 21st August, 2017 registered with Mahatma Phule Police Station, Kalyan, District Thane under Sections 420, 406 r/w 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 Mrs. Madhuri Kulkarni. It is stated that, in the year 2013, the first informant through estate agent Shri. Kamble, contacted the Applicant and his

brother Sachin Kadam for purchase of their flats bearing Nos. 102 and 103 situated at Gulab Apartment, Rambaug Lane No.4, Kalyan. The first informant decided to purchase the said flats for a total consideration of Rs.65,00,000/- and out of the same a total sum of Rs.9,00,000/- was paid by the first informant to the Applicant and his brother. Despite lapse of substantial period, as the Applicant failed to handover the possession of the said flats and did not comply with the transaction, the first informant demanded the money back. The Applicant for some or other reasons dodged to repay the said amount and only paid an amount of Rs.1,00,000/- till today. The first informant has categorically stated that the Applicant and his brother subsequently tried to shift the burden on each other and lastly told her, not to demand money back and to forget the said money. In the premise, the First Information Report lodged.

4 Mr. Killedar, the learned counsel appearing for the Applicant submitted that, it is basically a Civil transaction and as the limitation to file a Suit for specific performance has lapsed, the present crime is lodged as an after-thought. He submitted that, it was for the first informant to file a Suit for specific performance of the agreement executed between the parties. He, therefore, prayed that

the Applicant may be granted pre-arrest bail.

5 A bare perusal of the First Information Report indicates that, though the Applicant and his brother accepted the amount from the first informant in the year 2013-2014 till the date of lodgment of the first information report, despite repeated demands, did not repay the said amount. It, *prima facie*, shows that the Applicant along with his brother since inception were having intention to commit the act of cheating with the first informant. That, after accepting the said amount of Rs.9,00,000/- it appears that they have defalcated the said amount. *Prima facie*, the offence under Sections 406 and 420 of the Indian Penal Code is made out. There is sufficient material on record to indicate that the Applicant is the perpetrator of the said crime.

6 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.

7 Application is accordingly rejected.

(A.S. GADKARI, J.)