

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

CRI. ANTICIPATORY BAIL APPLICATION NO.1972 OF 2018

Smt. Aruna Pranochyar Katare

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....
Mr.S.G. Rajput, Advocate for the Applicant.

Mr.Arfan Sait, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 11, 2018.

P.C. :

This is an application for Anticipatory Bail in C.R.No.383 of 2018, registered with MIDC Police Station, Andheri, Mumbai, for offence punishable under Section 420 of Indian Penal Code (“IPC”, for short)

2 The prosecution case as appears from the First Information Report lodged by Smt.Yasmin Abdul Shaikh on 13th August, 2018, is that she was in search of room premises and during the search, she got acquainted with the applicant-accused. The applicant represented that she intends to sell room no.3. The said premises shown to the complainant and her husband. They liked the room premises. The consideration was

fixed to the tune of Rs.18,50,000/-. The amount of Rs.3,50,000/- was agreed to be paid towards installation of new meter, house repairs, water connection etc. Thus, the total amount to be paid to the accused was Rs.22,00,000/-. The complainant arranged an amount of Rs.15,50,000/- and executed documents on 29th September, 2017, through the advocate and the witnesses and the room was transferred in the name of the complainant after accepting the entire consideration. The balance amount of Rs.6,50,000/-, was paid on 14th November, 2017. The writing was executed on a stamp paper of Rs.100/-, which document was handed over to the complainant. After the transaction was executed, the complainant demanded possession of the premises. However, the applicant was evading grant of possession. The complainant then warned the applicant that she would lodge a complaint to the police. Thereafter, the applicant stated that room No.3 which is sold to the complainant is rented out to some other person and the same is being occupied by the licensee and hence the complainant was informed that presently she would be given possession of room no.13, till the licensee vacates the premises. As the complainant was in need of room premises, they occupied room no.13 and also shifted their belongings in the said room. On 30th November, 2017, the corporation had informed the

complainant that room no.13, would be demolished and alternative premises would be provided in Mahul area. The complainant therefore approached the applicant and intimated about the same. She was also informed that complainant has purchased room 3 after executing requisite document. The applicant, however, stated that the complainant should take possession of the room at Mahul and thereby cheated her. The FIR was lodged on 13th August, 2018.

3 Learned advocate for the applicant submitted that admittedly, the complainant had purchased the room premises from the applicant for which necessary documents were executed in her favour and those documents are in her possession. The possession of the room was given to the complainant and thereafter she started residing in the said premises which is being demolished and alternate accommodation is being offered to the complainant at Mahul village, Chembur, Mumbai. It is contended by the learned counsel for the applicant that on 2nd June, 2016, the applicant had purchased the premises viz. Room no.13, admeasruing 200 square feet situated at Shanti Nagar Opposite Oscar Darshan Building, Marol Military Road, Andheri (East), Mumbai, from one Sayyed Imtiyaz Ali, for which

agreement was executed on the same day along with irrevocable power of attorney dated 9th June, 2016 and affidavit dated 9th June, 2016 executed in favour of the applicant. The applicant relied upon the documents, such as, ration card and electricity bill. In the aforesaid affidavit, it was stated that the premises is transferred to the applicant and that peaceful and vacant possession was given to her and that the deponent has no objection for transferring electricity connection and issuance of ration card in favour of the applicant and that he would not raise any objection if such premises is taken for redevelopment and that the applicant would be authorized and entitled to alternate accommodation in connection with the said premises. It is further contended that after purchasing the said room from Sayyed Imtiyaz Ali, the applicant carried out repairs to the said room. Thereafter, the complainant had approached the applicant for purchase of room premises. After negotiations, the consideration was fixed and documents were executed in favour of complainant. The agreement for sale was duly notarized and possession was handed over to the complainant. It is further contended that the room premises was a protected structure, however, notice was issued by Deputy Collector (Encroachment) to vacate the premises and to avail the alternate accommodation at Mahul

village, Chembur, Mumbai. The complainant wanted alternate room premises in the same locality in which the said room was situated, and, she is not willing to accept the alternate accommodation offered to her at Mahul village Chembur. Hence, she filed the false FIR. It is submitted that the transaction is purely of civil nature for which the complaint has been lodged and FIR has been registered by the police. The applicant has not committed any act amounting to cheating. The entire case depends on documents and thus, custodial interrogation of the applicant is not necessary. During the course of arguments, it is submitted that, there is no distinction between room no.13 and room no.3 and it is the same room premises in respect to which the agreement was executed with the complainant and the possession was also handed over to the complainant. It is submitted that the agreement dated 2nd June, 2016, executed between Sayyed Imtiyaz Ali and the applicant refers to several details and the documents such as Electricity Meter No.15167865, Ration Card No.KA 713262, Election Identity Card No.FCSI 1035971, MMRDA House No.(ID) No.26248, Akhil Bhartiya Kamgar Utkarsh Receipt No.0225 dated 7th September, 2003. The said agreement also refers to room No.13, as the room premises purchased by the applicant from Sayyed Imtiyaz Ali. It

is submitted that the agreement dated 29th September, 2017, executed between the applicant and the complainant refers to same details and the documents. It is submitted that although the room premises referred to in the said agreement is mentioned as room no.3, there is no distinction between the said rooms and the room which is purchased by the applicant is the same room no.13, which was sold to the complainant and not room no.3. the learned counsel for the applicant harped upon the fact that the agreement dated 29th September, 2017, executed with the complainant refers to the same details as well as the receipt issued by MMRDA and the receipt of Akhil Bhartiya Utkarsh Kamgar bearing No.0225. The said document also refers to the passport, driving licence and ration card of the executor of the said document. Thus, all those documents are relating to room no.13 and that is the room sold to the complainant and not room no.3. It is submitted that offer of alternate accommodation was already made to the complainant which was not accepted by her. It is submitted that the ration card, the electricity bill, which were forwarded by Sayyed Imtiyaz, describe the room as room no.13, and, since the said documents were part of agreement executed with Sayyed Ali, it is crystal clear that the room which was sold to the complainant was room no.13 and not room no.3.

4 Learned APP submitted that the informant has executed document relating to room no.3, but temporary possession of room no.13, was given to the complainant, which was later on demolished by the corporation. It is submitted that even though notice under Section 41A was issued by the Investigating Officer, the applicant did not appear and cooperate with the investigation. The complainant was induced to part with the consideration of Rs.22,00,000/- towards purchase of room no.3. The accused has represented that the room no.3 has been rented out and the same would be handed over to the complainant within short span of time after the licensee vacates the premises. According to prosecution the possession of room 13 was given to the complainant for a temporary period till the possession of room no.3 is been handed over to the complainant. The investigation has reveled that the applicant had deceived the complainant by accepting consideration towards sale of room no.3 and thereby deceived her by not providing the possession of room no.3 and on the contrary the room no.13 was handed over to the complainant for a temporary period. The applicant was aware that the room no.13 is under demolition and instpite of that the possession was handed over to the complainant. If the contention of the applicant is to be accepted that room no.13 is

being sold to the complainant, then, it was definitely to the knowledge of the applicant that the premises is under demolition and inspite of that the said room was being sold to the complainant. Learned APP further submits that during the course of investigation, statements of witnesses were recorded which clearly shows that the applicant is involved in cheating the complainant. The statement of Imtiyaz Ali Sayyed and other witnesses clearly establishes that the applicant had sold room no.3 which is a distinct premises and had deliberately handed over possession of Room no.13, which was under demolition. It is submitted that the premises viz. room no.13 has been demolished immediately within a shot span of time after the possession was handed over to the complainant. It is submitted that there are several complaints lodged against the applicant and her family members. It is submitted that the statement of Imtiyaz Sayyed was recorded which indicate that he owned room no.3 as well as room no.13. He had sold room no.13 to the applicant. However, the entire consideration was not paid to him by the applicant. She had prepared documents in respect to the sale of room no.13 and he had signed the said documents. He had also assured that the balance consideration would be paid by her to him. However, the said transaction was subsequently cancelled. The documents

relating to cancellation of the said agreement were also prepared. It is, therefore, submitted that the anticipatory bail may be rejected.

5 The agreement for sale was executed between the applicant and the complainant on 29th September, 2017. In accordance with the said agreement, the premises is room no.3 situated at Shanti Nagar, Opposite Oscar Darshan Building, Marol Military Road, Marol, Mumbai, was sold to the complainant. The agreement further mentions that the said premises was purchased by the applicant from its original owner Mr.Sayyed Imtiyaz Ali, vide agreement for sale and irrevocable general power of attorney dated 9th June,2016. The agreement refers to several documents as stated hereinabove on the basis of which it is contended by the applicant that room no.3 is mentioned by mistake and infact the transaction was in respect to room no.13. It is pertinent to note that the applicant has also executed affidavit-cum-declaration which also describes that the room sold to the complainant is room no.3. The irrevocable general power of attorney executed between the applicant and the complainant also describes the said premises as room no.3. Several other documents such as deed of indemnity, no objection, letter issued

by the applicant to the concerned authorities also describes the room in respect to which transaction was executed as room no.3. The statement of Imtiyaz Gausali Sayyed was recorded on 8th October, 2018, refers to the fact of execution of documents in relating to room no.13 with the applicant and the cancellation of the said agreement. The said witness was also referred to fact that he was the owner of two separate rooms namely room no.13 and room no.3. The document viz. Cancellation of agreement was collected during the course of investigation. In pursuant to registration of FIR, panchanama was recorded through the complainant, wherein the said room which was sold to her by the applicant was pointed out during the course of investigation. While recording the panchanama, the room which was sold to the complainant viz. Room No.3 was identified by her, and, it was also noted that the room was occupied by some other person to whom it was rented out by the accused. Learned APP submitted that several cases are registered against applicant and her family. It is countered by advocate for applicant that cases are arising out of enmity. In the aforesaid circumstances, I find that there is sufficient evidence collected during investigation about the role played by the applicant and hence she is not entitled for grant of anticipatory bail.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application No.1972 of 2018,
is rejected.

(PRAKASH D. NAIK, J.)