IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICICPATORY BAIL APPLICATION NO.2091 OF 2018
WITH
CRIMINAL APPLICATION NO.1298 OF 2018

Vijay Dhananjay Jathar .. Applicant
Vs.
State of Maharashtra .. Respondent

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Mr.Amogh P. Khadye, Advocate for the Applicant.
Mr.Y.M. Nakhwa, APP for the Respondent – State.
Mr.Shekhar A. Ingawale, Advcoate for the Intervener.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 30, 2018.

P.C. :

The applicant is apprehending arrest in connection with C.R.No..360 of 2018, registered with Dindoshi Police Station, Mumbai, for the offence punishable under Sections 406 and 420 of Indian Penal Code ("IPC", for short). The informant had preferred Criminal Application No.1298 of 2018, seeking intervention in this application. The intervener is the first informant. He is permitted to intervene. Hence, Criminal Application No.1298 of 2018, is allowed and disposed of.

2 The case of the complainant is that the applicant is his brother. He used to visit the complainant's house frequently. Whenever he required money, the complainant provided the same to him. It is further alleged that the applicant is having money lending licence. Complainant had parted amount to applicant. In June 2013, the applicant along with his Manager visited the house of the complainant and requested that he is in need of Rs.8,00,000/-. The amount was transferred to the applicant through RTGS. The complainant had paid from time to time the amount of Rs.42,00,000/- through RTGS. On 28th January, 2016, when the applicant visited the house of the complainant, he inquired about sum of Rs.50,00,000/-. Applicant informed him that he would purchase property at Rahale Bhagadi, Taluka–Chiplun, District–Ratnagiri, and they intended to divert the said amount in the said transaction for which the complainant had consented. The applicant then suggested to the complainant that in Shirai, Taluka–Chiplun, District–Ratnagiri, 1.5 hectors land of one Bandu Khedkar is being offered for sale and the market value of the same is around 20,00,000/- to 25,00,000/-. However, due to family problem, the seller is going to sell the same for Rs.9,00,000/-, which is less than the market value. Applicant

informed the complainant that he is not in a position to purchase the same and requested the complainant to purchase the same, if he is interested. The complainant showed his inclination to purchase the said land for Rs.9,00,000/-. Complainant transferred an amount of Rs.9,00,000/- by RTGS on 6th February, 2016. Having received information from the applicant about proposed sale of land at Rampur, Taluka–Chiplun, District–Ratnagiri,, the complainant arranged meeting with the proposed seller on 8th February, 2016, and, decided to purchase the said land for Rs.42,00,000/-, and, in order to pay earnest money of Rs.10,00,000/- to the seller, he had handed over the same amount to the wife of the applicant in the presence of the seller. Thereafter, the agreed amount of sale was paid by RTGS to applicant and his wife. It is further alleged that the information received from the accused that the complainant had paid Rs.28,00,000/-, to the proposed seller is going to sell his land at Khopat, Taluka–Chiplun, District–Ratnagiri. The description of the payment is reflected in the First Information Report. It is, thus, alleged that the complainant was induced to part with the amount. It is also alleged that instead of purchasing land in the name of complainant, the accused had purchased the land in the name of his son. After deliberation, accused had agreed to pay

Rs.1,29,00,000/-, along with profit and issued cheque which was drawn on Bank of Maharashtra. The said cheque was dishonoured. FIR was registered on 29th June, 2018.

3 Applicant had preferred an application for Anticipatory Bail before the Sessions Court, which has been rejected by the Sessions Court vide order dated 29th September, 2018.

4 Learned counsel for the applicant submits that there is no element of cheating or breach of trust in the transaction. The dispute relates to advancing amount by way of investment. The dispute is purely of civil nature. FIR and the other evidence on record do not constitute the alleged offence. In respect of the cheque, which was dishonoured, criminal complaints are filed by the complainant for offence punishable under Section 138 of Negotiable Instrument Act, 1881. It is submitted that the writing was executed on a stamp paper in respect to the payment of amount. It is submitted that substantial amount has been paid to the complainant. The applicant is willing to co-operate with the investigation by attending the investigating officer. Custodial interrogation of the applicant is not necessary.

5 Learned APP submitted that huge amount of more than crores of rupees was parted by the complainant to the accused in pursuant to the false representations made by the applicant – accused. It is not disputed that the amount was parted to the applicant. It is submitted that the complainant was induced to part with the amount on the basis of false representation about the availability of the property for purchasing and after accepting the amount, accused had misappropriated the same. Although, writings were executed, the amount was not returned to the complainant. Learned advocate for the intervener reiterated the submissions advanced by learned APP. He pointed out the contents of the FIR. He submitted that the accused was handed over huge amount which has been misappropriated by him. The evidence on record clearly establishes the offences of cheating and criminal breach of trust. FIR indicates that the inducement was made on the basis of availability of the property for sale and although amount was collected by the applicant accused, the same was not utilized for purchasing the said property and on the contrary, the applicant purchased the property in the name of his son. It is submitted that the details about the transactions have been reflected in the FIR. It is, therefore, submitted that the

custodial interrogation of the applicant is necessary and hence the application be rejected.

6 On perusal of the FIR, it is apparent that the complainant is the real brother of the applicant and allegedly parted the amount to the applicant from time to time. The transactions reflected in the FIR, commenced from 2013. It is the case of the complainant that from time to time, the amount was demanded by the applicant, which was parted to him. It is also pertinent to note that the accused had promised him that an amount of Rs.1,29,00,000/-, would be returned with profit. It is also noted that the complainant had alleged false representation being made in respect to the purchase of the property and the complainant was compelled to part with the amount, however, it is noted that the despite of the alleged promise being not fulfilled, the complainant had again parted with the amount in respect to another property. *Prima facie*, looking to the nature of the transactions and the relationship between the parties, it appears that the matter relates to money transactions, and, considering the same, custodial interrogation of the applicant is not necessary. In the circumstances, case for grant of bail is made out.

7 Hence, I pass the following order:

:: <u>O R D E R</u> ::

(i) Anticipatory Bail Application No.2091 of 2018, is allowed;

(ii) In the event of arrest of the applicant in connection with C.R.No.360 of 2016, registered with Dindoshi Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

(iii) Applicant shall attend investigating officer of Dindoshi Police Station, Mumbai, on 2nd and 3rd November, 2018, between 10:00 a.m. to 12:00 noon, and thereafter as and when called for by the investigating officer, till filing of the charge–sheet;

(iv) Anticipatory Bail Application No.2091 of 2018 and Criminal Application No.1298 of 2018, stand disposed of.

(**PRAKASH D. NAIK, J.)**