

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1984 OF 2017**

Mahesh Baban Devgirikar	...Applicant
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. Prashant Mohan Patil, for the applicant.
Mr. Vinaykumar Pandey – orig. complainant in person present.
Ms. S.S. Kaushik, APP, for the State.
Mr. Bhosle, H.C. Kondwa Police Station, Pune City present.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 12th January, 2018.**

P.C. :

1. This is an application under Section 438 of Cr.P.C. The applicant is apprehending his arrest in Crime No.348 of 2016 registered at Kondhwa Police Station, Dist. Pune for the offences punishable under Sections 420, 467, 468, 471 read with section 34 of the Indian Penal Code.
2. It is the case of the prosecution that Vinaykumar Pandey lodged a report at the police station on 25.8.2016 alleging therein that he wanted to buy a plot. That one Sunil Shinde and Sandip Bhalgat had met him and had informed him that there are plots at Kondhwa Budruk for sale and that the owners of the said land are Mahesh Devgirikar and Viraj Belhekar. He had been along with the applicant to the said plots. he had

approved the said plots. He was also shown the photocopies of the sale deeds by which the applicant had acquired ownership. He had verified 7 x 12 extracts. The rate was fixed at Rs.5,50,000/- per guntha. It was agreed that the complainant would purchase 3 gunthas and his brother Kamlesh one guntha. On 29.1.2013, by a sale deed, the land was transferred in the name of the complainant and he had parted an amount of Rs.9,50,000/- in favour of the applicant. It was agreed that his brother would make payment by cheque. The complainant has further alleged that after purchase of the said land, he had not visited the said plot as he met with an accident. In January, 2016, he visited the said plot and could not find the wire fencing which was erected at the time of showing the said plot to the complainant. When he enquired with the neighbours, he had learnt that the said plot belongs to Pune Municipal Corporation and that the Municipal Corporation has carried out digging as there was a bridge that was to come up on the said plot. He had enquired with Sunil and Sandip Bhalgat. However, they avoided to reply. Thereafter, he had contacted the present applicant and informed them that either they should give possession of the land or they should return the amount. On the basis of the said report, Crime No.348 of 2016 was registered at Kondhwa Police Station against

the applicant.

3. By an order dated 17.11.2017, this Court (Coram: A.S.Gadkari, J.) had granted interim relief. At that juncture also the learned counsel for the applicant had submitted before the Court the revenue records i.e. 7 x 12 extract which showed that the name of the complainant is mutated in Survey No.46.

4. The learned counsel for the applicant submits that the complainant had purchased plot No.46. His name is mutated accordingly and plot No.47 is owned by Pune Municipal Corporation and the said fact is not disputed. It is pertinent to note that the applicant had transferred an amount of Rs.9,40,000/- in favour of the brother of the complainant namely Kailash Pandey way back in January, 2017. The complainant is present in the Court. Upon a query made by the learned APP, the complainant has admitted that he has received the said amount of Rs.9,40,000/-. However, he had not sent any demand notice to the applicant. That the said amount is deposited or received by him under protest or has been paid to him against his wishes. However, the applicant had issued a notice to the complainant to accept the amount and carry out a rectification deed in respect of Survey No.46. The learned counsel for the applicant has drawn attention of this Court to the reply filed

by the complainant which shows that he has reacted by informing the applicant that the money has been transferred on line and that he had not asked them to refund the amount.

5. As against this, in the first information report itself, the complainant has specifically stated that the applicant shall either return the amount or return the appropriate land. Taking into consideration the facts of the case and the documents placed on record, this Court is of the opinion that the interim relief granted vide order dated 17.11.2017 needs to be confirmed on same terms and conditions. Hence, the following order :-

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in Crime No.348 of 2017 registered with Kondhwa Police Station, Dist. Pune, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- (iii) The applicant shall report to the concerned police station as and when called and co-operate with the investigating agency to the best of his capacity.

(SMT. SADHANA S.JADHAV, J.)