

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2307 OF 2018

Mangesh Tukaram Sawant & Anr.	..Applicants
<i>Versus</i>	
The State of Maharashtra and Anr.	..Respondents

Mr. S.V. Marwadi I/b Mr. Sachin A. Mhatre for the Applicants.
Mr. Arfan Sait, APP for the State.
Mr. Rahul P. Lad, PSI D.N. Nagar Police Station is present.

CORAM : PRAKASH D. NAIK, J.

DATE : 02 NOVEMBER 2018.

P.C:-

. This is an application for Anticipatory Bail in connection with MECR No. 08/2018 registered with D.N. Nagar Police Station for offences under Sections 403, 405, 406, 418, 34 of IPC.

2. The case of the complainant is that he had booked a flat with the applicant and agreement for sale was executed on 10th October, 2001. Initially, the complainant had paid an amount of Rs. 8 Lakhs and subsequently the amount of Rs. 10,37,500/-. Despite of the payment of consideration, the flat was not handed over to the complainant.

3. It appears that the complainant had filed a police complaint and since the police did not take cognizance of the complaint, he filed a private complaint in which investigation was directed under

Section 156(3) of Cr.P.C. vide order dated 27th July, 2018. In pursuant to that MECR was registered for the aforesaid offences. Learned Counsel for the applicant submitted that the agreement itself indicates the entire consideration has to be paid for handing over the possession of the flat. According to the applicant, demand letters were forwarded to the complainant for payment of balance consideration, however, he did not respond. Learned Counsel also pointed that the earlier complaint was inquired into by the police and vide letter dated 29th December 2017, the complainant was informed that the dispute is of civil nature and he shall resort to civil remedies. It is further submitted that there is no document to substantiate the fact that the cash amount of Rs. 10,37,500/- has been paid to the applicant.

4. Learned APP submitted that the consideration was paid to the applicant and the promise of handing over the flat premises was not made. The demand letters relied upon by the applicant are doubtful and investigation in that regard is required to be conducted. Despite of promise of providing the flat premises after receipt of the consideration, the applicant had not given the possession of the premises to the complainant. It is therefore, submitted that clear case of cheating is made out. The complainant has parted an amount of Rs. 18,37,500/-.

5. I have perused the documents. The inquiry in relation to the earlier complaint was apparently conducted by the police and it was noted that the dispute is of civil nature. MECR was registered on the basis of the private complaint filed by the complainant. There is no evidence on record to establish the payment of amount in cash. The agreement was executed in the year 2001. The applicant is relying upon

the demand letters. The veracity of the said letter can be verified by the police for which custodial interrogation of the applicant is not necessary. The applicant can be directed to attend the police station and cooperate with the investigation.

ORDER

- i) ABA No. 2307 of 2018 is allowed.
- ii) In the event of arrest of applicant in connection with the MECR No. 08/2018 registered with D.N. Nagar Police Station. The applicant be released on bail on furnishing PR bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.
- iii) The applicant shall attend the Investigating Officer once in a week on Friday between 10 a.m. to 12 p.m. till filing of charge sheet.
- iv) The application stands disposed of.

(PRAKSAH D. NAIK, J.)