IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1306 OF 2018

Arvind Mohanlal Jain ... **Applicant**
V/s.
The State of Maharashtra & Anr. ... **Respondents**

Mr.A.P. Mundargi, Senior Advocate i/b. Mr.Abhishek Patil for Applicant.
Mr.Ajay Patil, A.P.P. for Respondent No.1-State.
Ms.Meghna Gowalani for Respondent No.2.

CORAM : A.S. GADKARI, J.

DATE : 26th March 2019.

P.C. :

1] This is an application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in connection with C.R. No. 0237 of 2018 dated 09/05/2018 registered with Mahatma Phule Chowk Police Station, Kalyan, District Thane, and now being investigated by Economic Offence Wing, Thane City, having C.R. No. I-202 of 2018 for the offence punishable under Section 420, 406, 465, 467, 468, 471 read with 34 of the Indian Penal Code.

2] Heard the learned Senior Counsel for the applicant, the learned Counsel for respondent No.2 and learned APP for the State.

Perused the record of investigation.

3] The first information report is lodged by Mr.Raju Chandwani.

The prosecution case in brief is that the applicant represented himself to be the power of attorney holder of one Gade family. It is also represented that the names of family members of Gade family have been entered into revenue record and the said members have given power of attorney to the applicant to deal with their immovable property bearing Survey No.27/3(part), 27/4 (part) and 52 lying and situated at village Gauripada, Kalyan, Taluka Kalyan, District Thane, ad-measuring about 194 ares. The applicant also assured the informant and accepted the liability of getting a clear title of the said suit property. Accordingly, a Memorandum of Understanding was executed in the month of February 2015 between applicant on the one side and the first informant and his partners on the other side. That in pursuance of the representations and inducement made by the applicant, the first informant paid a total sum of Rs.7,90,00,000/- (Rs.Seven Crore Ninety Lac only) to the applicant by way of cash and cheque. The applicant has executed receipts in that behalf. That despite lapse of substantial period, the applicant neither gave possession with clear title of the said property nor returned the amount to the informant. In the premise, the present crime under Section 406 and 420 of the Indian Penal Code is lodged.

4] Mr.Mundargi, the learned Senior Counsel appearing for the applicant submitted that, Civil disputes pertaining to the said land are *subjudiced* before the Court of competent jurisdiction between the parties. He submitted that, though the applicant has executed certain receipts depicting acceptance of cash payments, the said payments were accepted for some other monetary transactions including security transaction. He further submitted that, the present dispute is civil in nature and therefore, the custodial interrogation of the applicant is not necessary. He therefore prayed that, the present application may be allowed and the applicant may be protected by pre-arrest bail.

5] The record further indicates that the applicant has accepted the afore-stated amount of Rs.7,90,00,000/- by way of cheque and also in cash. The applicant has executed various receipts of payments accepted in cash. The applicant has affixed his signature on the revenue stamp affixed to the said receipts. The agreement entered into between the applicant and the first informant clearly postulates that, it was a lawful obligation to the applicant to get the title of the said property in-question cleared and handover the property to the first informant, subject to financial fulfillment by the first informant to the applicant.

As noted earlier, the first informant has parted with huge amount in favour of the applicant and despite the said fact, the applicant has failed to comply with his part of obligation towards the first informant. It appears from the record that, since inception, the applicant having intention to commit the act of cheating against the informant and therefore, he induced the first informant to part with the afore-stated huge amount for his personal wrongful gain causing wrongful loss to the first informant.

6] As far as the contention of the learned counsel for the applicant that the present transaction is civil transaction is concerned, the Hon'ble Supreme Court in the case of *Rajesh Bajaj Vs. State NCT of Delhi and others, reported in (1999) 3 S.C.C. 259*, has observed that, infact many a cheating were committed in the course of commercial and also money transactions.

It is by now the settled position of law that many civil transactions have a facet of criminality and the said aspect has to be deduced for the facts of each case. Therefore, merely because the transaction is civil transactions, the criminal liability of the accused therein cannot be diluted and or absolved.

7] In view of the above and after taking into consideration the gravity of the offence and the serious allegations against the applicant coupled with the fact that the investigation of the present crime is at nascent stage and thorough investigation by the police is necessary, this Court is of the opinion that the applicant does not deserve to be protected by pre-arrest bail.

8] Application is, accordingly, rejected.

[A.S. GADKARI, J.]