

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

ANTICIPATORY BAIL APPLICATION NO.1647 OF 2017

Gautam Shrirang Sonawane

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Kuldeep Nikam, Advocate for Applicant.
- Mr.S.S. Kaushik, APP for the State/Respondent.
- PSI Mr.Aniruddha Sawarde, Bhosari Police Station, Pimpri Chindchwad, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 13th JUNE, 2019

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.131/16 registered with Bhosari Police Station, Pune, under sections 409, 420, 109 of the Indian Penal Code.
2. The FIR is a result of the order passed by the J.M.F.C. Khadki under section 156(3) of Cr.P.C. The complaint was lodged before that Court by one Surjit Kumar Nafari, the

Chairman of Ordnance Factories Officers Group Co-op Hsg. Soc. Ltd. It is mentioned in the complaint that the complainant was a registered Co-operative society of the members of Arm Forces, whose officers came in contact with the present Applicant who represented to the complainant that the lands situated at village Ambadvet, Taluka Mulshi, District Pune, bearing survey No.82/1 and 83 were available for sale. It is the specific case of the complainant that the Applicant made a representation that the land owners were his relatives and he was in a position to procure all these lands for the complainant. He told the complainant to appoint him as legal representative to complete the transaction of purchase of lands. Accordingly, an MOU was entered into between the complainant and the Applicant. Though, the complaint mentions the date of such MOU as 15/09/2017, a copy of the MOU annexed to this Application mentions that it was executed in October 2017. The complainant society paid more than Rs.8 Crores to the Applicant. It was mentioned in the MOU that they were Watan lands it was necessary to pay requisite Najrana and get clearance certificate

from the Government. The complaint further mentions that out of Rs.8 Crores, only Rs.3 Crores were distributed amongst the land owners. Rs.5 Crores were used by the Applicant for his own benefit. He had not even paid the Najrana as promised. At his instance some of the land owners had encroached upon the land for which they had already accepted the sale price. On these allegations, the complaint was filed.

3. Heard learned Counsel Mr.Kuldeep Nikam for the Applicant and learned APP Ms.S.S. Kaushik for the State.
4. Mr.Nikam submitted that the entire transaction is in the nature of civil dispute and the Applicant has not committed any offence. He submitted that the transaction was entered into in the year 2007 and the complaint was lodged much belatedly in the year 2016. He submitted that whatever amount was paid to him, the Applicant has further paid it to the land owners and some of the transactions are already completed. He submitted that the Secretary of the complainant society has entered into

transactions with consent of the present Applicant with some land owners. He further submitted that some of the land owners have filed a Civil Suit bearing RCS No.1052/18 before the Court of Civil Judge Senior Division, Pune for partition of the same properties and there is status quo operating whereby there is a legal bar for the Applicant to complete the transaction which was the subject matter of the MOU.

5. Considering the averments in the MOU, it is clear that the Applicant had taken the responsibility to complete the transaction of purchase of land in favour of the complainant society in respect of Survey No. 82 and 83 at village Ambadvet, admeasuring in all 20 acres. One of the recitals mentions that the Applicant had taken every responsibility to obtain the general power of attorney from all land owners, for completing government procedure and also to pay the Najrana to the Government of Maharashtra for completing the procedure. The recitals in this MOU is corroborating the inducement mentioned in the complaint. It is also undisputed that the present Applicant

has taken amount of more than Rs.8 Crores. According to the prosecution case only amount of Rs.3 Crores was utilized for payment to some land owners.

6. In this background, it is quite clear that the offence of cheating and misappropriation is made out. The complainant society was made to part with huge amount on the basis of this inducement given by the Applicant. Intention of the Applicant appears to be present right from the inception looking at the circumstances which transpired after the MOU was entered into. The partition suit is filed by some of the land owner. But at this stage, the Applicant cannot take a stand that because of the internal dispute between the landlords he is unable to complete the transaction. The complainant has alleged that, at his behest the lands are not being transferred. All this would have to be investigated for which custodial interrogation of the Applicant is necessary. Therefore, no case for anticipatory bail is made out. Accordingly, the application is rejected.

7. At this stage, learned Counsel for the Applicant submitted that interim relief was granted by the order dated 19/09/2017 which is continued till today and prior to that he was granted interim protection by the Sessions Court since 2016. He, therefore prays for extension of the same for some time more. However, the order sheets show that many times the adjournment was granted on the request for settling the matter. Ultimately the matter was not settled and today the application is disposed of finally. Therefore request for extension of interim relief is rejected.

(SARANG V. KOTWAL, J.)