

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

ANTICIPATORY BAIL APPLICATION NO.2101 OF 2019

Sachin Eknath Magar

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Nitesh Bhutekar @ Saurabh Patil @ Sachin Jore, Advocate for Applicant.
- Ms.S.S. Kaushik, APP for the State/Respondent.
- PSI Mr.M.V. Bhoir, Khandeshwar Police Station, Navi Mumbai, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.305/18 registered with Khandeshwar Police Station, Navi Mumbai, under sections 13, 420 r/w 34 of the Indian Penal Code.

2. The FIR is lodged by one Shailish Ramchandra Nikam on 09/12/2018. The informant has stated in his FIR that his co-

brother Sachin Audumbar Toraskar wanted to purchase a residential room. They came to know through their associates that one construction project was going on at Usarli by name Pratidnya Garden. It was developed by M/s. Pratidnya Garden Builder and Developers. The informant went to the site and met the present Applicant. The Applicant quoted the price for 1 BHK admeasuring 519 Sq.ft. as Rs.18 lakhs. He saw the site. The informant as well as Sachin Toraskar booked one room each. They were specifically told by the Applicant when they enquired that he had all the requisite permissions to carry out construction and he represented that possession of the room would be given within a period of two years. Accordingly, the informant gave Rs.3,50,000/- and Sachin Torakar also gave similar amount. However, even after passage of six months no progress was made and the construction did not start. The informant again approached the Applicant. The Applicant this time represented that they were having some difficulties in starting the construction on that site. He represented that they had already developed a project at Sector 10 Survey No.235 at

Kharghar. The Applicant suggested that he could transfer their claim to the site at Kharghar. The informant and his co-brother accepted his suggestion. The Applicant took away earlier receipts and gave further receipts for the new site. The informant paid further amount and in all he paid Rs.8 lakhs. Even though construction of building was completed, but the informant was not given any room nor the sale deed was registered. The Applicant avoided to honour his commitment on one pretext or the other. The informant came to know that CIDCO had declared that construction as unauthorized. Thus, the informant and his co-brother Sachin were cheated. The FIR mentions that there were other victims as well. In all, they were cheated for more than Rs.25 lakhs. On this basis, the FIR is lodged.

3. Heard learned Counsel Mr.Nitesh Bhutekar for the Applicant and learned APP Ms.S.S. Kaushik for the State.
4. Mr.Bhutekar submitted that the partners of the Applicant were already arrested and were released on bail and

therefore Applicant's custodial interrogation was not warranted. He submitted that during custodial interrogation of the Applicant's partners, no amount was recovered and the same situation would arise during custodial interrogation of the Applicant. Therefore his arrest would be pointless.

5. Learned APP opposed this application and added that the victims were knowingly cheated. False representation was made and the Applicant does not deserve protection of anticipatory bail. In any case custodial interrogation of the Applicant is necessary to find out his intention and exact role.

6. I have considered these submissions. The FIR sufficiently makes out the case against the Applicant. The Applicant had been continuously making false representations to the informant and others. The Applicant was well aware that he did not have requisite permissions on the site at Usarli for which he had initially accepted the payment. In spite of that, the Applicant represented that all the requisite permissions have

been obtained. Even for the second site, as subsequently it was noticed, the construction was declared as, unauthorized by CIDCO. Therefore on that occasion it cannot be said that the Applicant was not aware of what was going on and yet different amounts were accepted from different victims. In this view of matter, intention of cheating and misappropriation is clearly made out. The Applicant's role and execution of plan to cheat these people needs to be gone into through his custodial interrogation. Though, the custodial interrogation of the partners did not recover any amount, that does not mean that opportunity should be denied to the investigating agency to carry out thorough investigation. In this view of the matter, application is rejected.

(SARANG V. KOTWAL, J.)