

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

ANTICIPATORY BAIL APPLICATION NO.2259 OF 2018

Jagdish Hiralal Unecha

.... Applicant

versus

The State of Maharashtra & Anr.

.... Respondents

- Mr. Sanjeev Kadam I/b. Vivek V. Salunke, Advocate for Applicant.
- Ms. S. S. Kaushik, APP for the State/Respondent.
- Mr. Mahendra Sandhyanshiv, Advocate for respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th JULY, 2019

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R. No.640/2018 registered with Lonikand Police Station under Section 420 and 468 of IPC.

2. The FIR is lodged on 29/5/2018. The FIR is lodged by one Purushottam Kabra on behalf of his brother Ramratan Kabra who has suffered losses because of the acts of the present applicant. According to the first informant, Ramratan Kabra came in contact with the present applicant who represented that he was

developing a property near Pune and Ramratan could purchase flats in that property. First informant's brother Ramratan transferred Rs.2.50 Crores through RTGS in the account of the present applicant on 10/1/2013. Ramratan and the present applicant entered into a MOU dated 10/1/2013 in respect of 16 flats. The flats were as follows.

1. In Sai Galaxy, A wing, flat Nos.201, 401, 216, 416, 501, 516 and 301.
2. In D wing, flat Nos.308 and 509.
3. In C wing, flat Nos.306 and 506.
4. In Sai Srushti, B wing, flat Nos.301, 302, 303, 304 and 401.

3. According to the first informant, he and his brother were residing at a distance of 300 km away at Malegaon. Therefore, they could not follow up the transaction. But for five years nothing further was done. The first informant and his brother did not get possession of the flats. On further inquiry, they came to know that the applicant had already sold flat Nos.308 in D wing, flat No.301 in A wing, flat No.306 in C wing and flat No.401 in A wing in Sai Galaxy in the year 2012 itself i.e. before the date

of MOU. Thereafter, they had sold flat Nos.216, 201, 416 in A wing and flat Nos.301, 304 in B wing of Sai Galaxy after the MOU was entered into without obtaining permission from Ramratan. It is further alleged that flat Nos.501, 506, 509 and 516 were in respect of flats on the 5th floor and there was no permission to build 5th floor. Thus, according to the first informant, his brother Ramratan was cheated for that amount.

4. Heard Mr. Sanjeev Kadam, Ld. Counsel for the Applicant, Ms. Kaushik, Ld. APP for the State and Mr. Mahendra Sandhyanshiv, Advocate for Intervener.

5. Shri. Kadam submitted that the MOU was entered into between the parties on 10/1/2013. He invited my attention to para No.4 of the agreement which shows that the applicant was to buy back all these flats for an amount of Rs.3.45 Crores. It is purely money lending transaction. He also submitted that clause No.5 shows that even if the project was not completed, the applicant had to make the repayment within one year alongwith profit. He therefore submitted that there is no doubt that

agreement was purely in the nature of money lending transaction.

6. As against this, Ld. APP as well as Ld. Counsel for the Intervener submitted that Ramratan suffered heavy losses because of the acts of the present applicant. Some of the flats were already sold before the MOU was entered into and some were sold after the MOU without obtaining permission from Ramratan. They invited my attention to the fact that permission for 5th floor was never granted till filing of the FIR. Therefore, flats mentioned on that floor could not be constructed at all.

7. I have considered the submission made by the parties. At this stage, it is difficult to hold that the MOU was a money lending transaction. The fact remains that the MOU does not mention some of the flats were already sold on the day of execution of MOU. There is no clause in the entire MOU explaining this fact. Therefore, at this stage, the first informant is right in contending that Ramratan was kept in dark in regarding non-availability of those flats for sale. The other contention was the other flats were sold without his permission is also correct.

There are allegations that there were no permissions to construct 5th floor. This is also an important consideration. Thus, taking into consideration representation made by the applicant in the MOU itself, the case of cheating and misappropriation of property at this stage is made out and custodial interrogation of the applicant is necessary to find out the money trail and to find out the details of the conspiracy. Therefore, custodial interrogation of the applicant is necessary. No case to grant any relief is made out. Hence, application is rejected.

8. At this stage, Ld. Counsel for the applicant prays for extension of interim relief. However, considering the gravity of the offence and necessity of effective custodial interrogation, the prayer is rejected.

(SARANG V. KOTWAL, J.)