

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

ANTICIPATORY BAIL APPLICATION NO.2710 OF 2018

1) Shekar Kishore Negi; and	
2) Mahesh Pandurang Naik	.. Applicants
Vs.	
State of Maharashtra	.. Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.2722 OF 2018**

Suryapratap Avadhesh Singh	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.2723 OF 2018**

Frank Devid Thomson	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Mr.Ganesh Rangayya, Advocate for the Applicants.
Mr.A.R. Kapadnis, APP for the Respondent - State.
Mr.S.R. Wagh, PSI, Virar Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 4, 2019.

P.C. :

The applicants in these applications are apprehending arrest in connection with C.R.No.1329 of 2018, registered with Virar Police Station, District-Palghar, for the offences punishable under Section 420 read with 34 of Indian

Penal Code (“IPC”, for short). Applicants had preferred an application for anticipatory bail before the Sessions Court, which has been rejected.

2 The prosecution case is that the applicants came in contact with the first informant and his brother in 2010. They represented that one site is under construction at village Kanher, Taluka Vasai, in the name and style of “Naleshwar Construction”. They had purchased the said as an agricultural land and they are in process of converting it into non agricultural purpose. They will procure all the permissions to transfer the said land in the name of the first informant. The applicants showed papers pertaining to Survey No.7, Hissa No.9 plot No.57, area admeasuirng 1-35-03 H.R.P. and Layout plan of the project. Accused/applicant in ABA 2710 of 2018 stated that search of the property was conducted and their advocate has given them “Title Clearance Certificate. The deal was finalized for purchase of the aforesaid land for Rs.56,37,600/-. Accordingly, the complainant issued cheque dated 22nd February, 2010, for Rs.10,00,00/-, in favour of the applicants and executed MOU with the applicants in ABA 2710 of 2018. Complainant thereafter issued various cheques in the name of Naleshwar Constructions and he took

Rs.27,00,000/-. During the process of the deal, Applicant no.1 in the aforesaid application showed the papers of other flat i.e. 49, 50 and 56 and assured that they would transfer the clear title of the said land in the name of the complainant. The complainant paid an amount of Rs.30,00,000/-, to accused Shekhar Negi and the receipt was issued on behalf of Naleshwar Constructions through the proprietor and executed an undertaking dated 13th June, 2011, in respect to the deal. The balance amount of Rs.29,00,000/-, was paid to M/s.Shivangi Constructions and Developers for construction. It is further alleged that the deal was to be completed within a period of six months as per the undertaking, but, the accused did not perform contract within the stipulated time. The land was not transferred in favour of the complainant till date. Thus, the applicants cheated the complainant for an amount of Rs.98,01,000/-. Hence, First Information Report was lodged on 24th November, 2018.

3 Learned advocate representing applicants in ABA No.2710 of 2018 submitted that deal was executed in 2010 and FIR was lodged belatedly in 2018. The dispute is purely of civil nature. There was no intention to cheat the complainant. It is further submitted that on account of certain difficulties MOU

could not be executed. There is non performance of agreement, which gives right to civil remedy. There was no intention to deceive the complainant and hence, the offence of cheating is not made out. The entire matter relates to documents and custodial interrogation of the applicants is not necessary. It is further submitted that in 2009, correspondence were made to the Adivasi in whose name the property stands for clearance of the property.

4 Learned counsel for the Applicants in Anticipatory Application Nos.2722 of 2018 and 2723 of 2018, submitted that they have not made false promise to the complainant. MOU was executed with the applicants in ABA No.2017 of 2018, and not with the applicants. Naleshwar Builder approached the applicants and gave contract for construction of industrial shed in RCC No.7H, S,Bi,9 at Kanher village. Accordingly, applicant and Naleshwar Builders agreed to contract terms. It is submitted that the said applicants are only concerned with construction and in that regard, the amount was deposited towards construction. Naleshwar Builders directed the complainant to pay contract fees directly to applicant. Applicants were entitled for amount of Rs.58,00,000/-. In fact construction carried out, which was demolished. There was no privity of contract between the said

complainant and the applicants. Except the fact that the said applicants were supposed to carry out construction, no false representations permit to the complainant. The offences under the MPID Act are not attracted in the present proceedings. It is submitted that the applicant in ABA No.2723 of 2018 was an employee of M/s.Shivangi Constructions. It is further submitted that the custody of the applicant is not necessary for the purpose of investigation and the applicants are ready to cooperate with the investigation. Learned APP submits that the land was earmarked as Adivasi land, and, thus, the accused ought not to have executed any MOU or deal with the complainant. Agreement itself was bad in law. Although MOU was executed in 2010, no steps were taken by the accused for obtaining requisite permissions under the Maharashtra Land Revenue Code since the property was earmarked as "Adivasi Land". The amount was transferred into the account of M/s.Shivangi Constructions. The applicants in Anticipatory Bail Application No.2722 and 2723 of 2018 had knowledge that the land was belonging to Adivasi and no construction activities should be carried out on the said land. It is, therefore, submitted that the applications be rejected.

5 I have perused the documents refereed to. Admittedly, the landed property was Adivasi land and no

documents could have been executed for the purpose of construction or sale. The amount is being credited into account of M/s.Shivangi Construction. MOU was executed in 2010-2011 and since then no steps have been taken to regularize the deal. no permissions were obtained from the concerned authorities in accordance with the provisions of the Maharashtra Land Revenue Code. However, as far as the applicant in ABA No.2723 of 2018, is concerned, if he is employee of M/s.Shivangi Constructions. Although the applicant in ABA No.2723 of 2018, is referred to as owner, there is nothing to indicate that he is owner. M/s.Shivangi Constructions is a sole proprietorship and applicants in ABA No.2722 of 2018 is proprietor. In the circumstances, the applicant in ABA No.2723 of 2018 is entitled for the relief under Section 438 of Code of Criminal Procedure. However considering the role played by the applicants in ABA Nos.2710 of 2018, and 2722 of 2018 and the investigation conducted by the police, no case for grant of relief is made out.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application Nos.2710 of 2018
and 2722 of 2018, stand rejected;

- (ii) Anticipatory Bail Application No.2723 of 2018, is allowed;
- (iii) In the event of arrest of the applicant, namely, Frank Devid Thomson in connection with C.R.No.1329 of 2018, registered with Virar Police Station, District-Palghar, he be released on bail on his furnishing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;
- (iv) The said applicant is directed to attend Virar Police Station, District-Thane, as and when called for by the investigating officer;
- (v) Anticipatory Bail Applications stands disposed of.

(PRAKASH D. NAIK, J.)