

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 342 OF 2021

Parag s/o Diwakar Pathak ... **Applicant**
Age 38 years, Occu: Business,
R/o House No.29, Sector G-3, N-7
CIDCO, Aurangabad

VERSUS

The State of Maharashtra, ... **Respondent**
Through Police Station Ashti,
District Beed

Mr. Sachin S. Panale, Advocate for the applicant,
Mr. N. T. Bhagat, A.P.P. for the State.

CORAM : V. G. BISHT, J.
DATE : 2nd September, 2021.

ORDER:

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 12/2021 registered with Ashti Police Station, District Beed for the offence punishable under Sections 420 r/w 34 of the Indian Penal Code, 1860.

2. It is the case of prosecution that applicant who was acquainted with informant offered to sale his agricultural land bearing No. 148 admeasuring 2 H 77 R. The informant, in between 25.12.2014 to 13.01.2018, paid total amount of Rs.22,45,000/- from the accounts of informant, his wife and friends, however despite that the applicant and his family members failed to execute sale deed. Accordingly the complaint came to be filed.

3. Mr. Sachin S. Panale, learned counsel for the applicant, submits that the allegations in the first information report do not make out a case of cheating with dishonest intention. The entire allegations are of civil nature. In fact, the informant should have filed civil suit seeking specific performance of contract but as the period of limitation is already over, the present first information report is lodged in collusion with the police authority. The learned counsel then next submitted that no account is produced on record till today to show that the alleged amount was duly paid to the applicant and his family members. Whatever statement is produced on record by learned counsel for the informant, who is assisting the A.P.P., is pertaining to some other persons and not the applicant in the present case. According to the learned counsel, the earnest money was taken at the time of agreement by the applicant, his mother and sisters and the share of his amount which comes to Rs.3 lakhs with interest has already been refunded through RTGS to the informant. Thus, having regard to the facts and circumstances of the case, custodial interrogation of the applicant is not necessary.

4. Mr. N. T. Bhagat, learned A.P.P., on the other hand, opposes the submissions and contends that the applicant and his family members have committed offence of cheating, investigation is in progress and therefore, the present application should not be entertained.

5. Apparently, the dispute between the parties is purely of civil nature and it is rightly submitted by the learned counsel for the applicant that remedy lies with the civil court.

6. It is also admitted by the learned counsel for the informant, who is assisting the A.P.P., that the present applicant had refunded an amount of Rs.3 lakhs of his share out of Rs.5 lakhs which were given at the time of execution of Isarpavati.

7. Coming to the main allegations, although it is claimed by the prosecution that the informant and his wife, with the help of monies of friends, had paid consideration amount to the tune of Rs.22,45,000/-, but admittedly no such statement is forthcoming either from the side of informant or from the side of the prosecution showing that indeed that much amount was transferred in the account of the applicant from time to time.

8. Even otherwise, as noted above, the transaction being of civil nature, the custody of the applicant is not necessary for the purpose of investigation.

9. Having due regard to the facts and circumstances of the case, I am inclined to allow the present application. Hence, following order.

O R D E R

- i. The application is allowed.
- ii. Interim protection granted by this Court on 09.04.2021 is confirmed and is made absolute.

(V. G. BISHT, J.)