IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1213 OF 2021

Mangesh s/o Prasanath Bhagwath ... **Applicant**
Age 33 years, Occu: Service,
R/o Ladgao Road, Durga Nagar,
Vaijapur, District Aurangabad.

VERSUS

1. The State of Maharashtra, ... **Respondents**
Through Satara Police Station,
Aurangabad.

2. Ganesh s/o Rawan Dhoble,
Age 33 years, Occu: Agri.
R/o Jamphali Tq. Paithan,
District Aurangabad

Mr. M. R. Jadhav and D.S. Patil, Advocates for the applicant,
Mr. A. S. Shinde, A.P.P. for the State.

CORAM : PRAKASH D. NAIK, J.
DATE : 17th December, 2021

ORDER:

1. The applicant is apprehending arrest in Crime No. 338/2021 registered with Satara Police Station, District Aurangabad for the offences punishable under Sections 406, 420, 504 r/w 34 of the Indian Penal Code (for short "IPC").

2. The case of the prosecution is that the complainant was in search of residential premises. Sachin Jadhav, Ashok Shejul and Yogesh Ubhedal were aware that the complainant was in search of house. They

introduced the complainant to Aditya Garpagare and his maternal uncle Mangesh Bhagwat, Vipul Wakkani and Sandip Bhagat. The complainant was shown the flat premises situated at Gat No. 49, Ajinkyatara Building owned by Annasaheb Eknath Lokhande. It was decided to execute the transaction through the assistance of Aditya Garpagare, Mangesh Bhagwat, Sachin Jadhav, Ashok Shejul and Yogesh Ubhedal. The complainant was informed that Isar Pavti would be executed and within two months registration would be done. The complainant issued a cheque of Rs. 25 Lakhs and the amount was transferred to Aditya Garpagare through RTGS. On 1.11.2019, Annasaheb Lokhande executed Isar Pavti on a bond paper of Rs.100/- Aditya Garpagare did not transfer the amount to Annasaheb Lokhande and retained the said amount with him. Although a period of two months had lapsed, the flat was not registered in the name of the complainant. Annasaheb Lokhande stated that he has not received the amount and the said amount is with Aditya Garpagare. Annasaheb Lokhande promised the complainant that he would recover the amount from Aditya Garpagare and same would be returned to the complainant. However, the amount was not returned to him. Thereafter Aditya Garpagare and Mangesh Bhagwat promised the complainant that a Government job would be provided to him and collected his educational certificates. However, there was no response. On 8.1.2021, Aditya Garpagare called him by stating that the possession of the flat will be handed over to him. However, possession was not given. The complainant demanded his money but except assurances the promises were not fulfilled. Thereafter, Mangesh Bhagwat executed writing on a bond paper of Rs.100/- and stated that transaction would be completed on 2.2.2021. However, deal was not completed. Thus, the complainant was cheated.

3. The co-accused Sachin Jadhav, Ashok Shejul, Annasaheb Lokhande and Sandip Bhagat had preferred applications for anticipatory bail which were allowed by order dated 14.10.2021 by this Court. The applicant had preferred anticipatory bail before the Sessions Court which has been rejected by order dated 18.08.2021.

4. Learned Advocate for the applicant submitted that entire case is false. The informant never purchased or agreed to purchase any flat as mentioned in the FIR. The informant has invested his amount in RTI Public Charitable Trust. It was transferred to the Trust through Bank account of the applicant. The informant was aware that the amount was given to the Trust. He used the bank account of accused Aditya Garpagare for his flat and executed agreement for protesting his interest. The agreement was later cancelled on 3101.2020. On 11.01.2021, Memorandum of Understanding (MOU) was executed between the informant and the applicant wherein informant settled the alleged transaction and accepted Rs.4,50,000/- from the applicant. Remaining amount of Rs.8 lakhs was to be given by way of compensation till 02.02.2021. The applicant has transferred Rs.14 lakhs to the Trust through RTGS and receipts are issued to applicant.

On 04.11.2020, another MOU was prepared between informant Ganesh Dhobale and Trust. Accused Aditya Garpagare had accounted amount of Rs.25 lakhs received by him on his bank account to the satisfaction of informant. The informant had initiated action against the trust about dishonour of cheques. However, while lodging FIR, the informant suppressed alll these facts.

5. Learned Advocate for the applicant has placed on record MOUs, affidavit, photo copies of cheques, bank statement of Aditya Garpagare and copy of complaint filed under section 138 of the Negotiable Instrument Act.

6. Learned APP submitted that the complainant was deceived. Custodial interrogation of the applicant is necessary. the amount is required to be recovered. The accused is absconding. False promises were made to the complainant.

7. From the documents on record, it appears that genesis of the transaction has been suppressed by the informant. By relying upon the agreement, totally different picture is presented. It appears that the amount was invested with the trust. The applicant has relied upon several documents regarding MOU executed between the parties and other documents. All these documents are placed on record for the first time. The applications preferred by the other accused were allowed by order dated 14th October, 2021 on the ground that co-

accused had not received the amount. Accused Aditya Garpagare was arrested on 10.09.2021. While allowing the applications preferred by co-accused, it was observed that after arrest of Aditya Garpagare, he was interrogated and he disclosed that the complainant was induced to part with he amount to Mangesh Bhagwat (applicant) who is working with the Charitable Trust. The amount was transferred in the account of Aditya Garpagare, however, he has suppressed the vital fact.

8. Considering these aspects, the application is allowed. Hence, I pass the following order :-

O R D E R

i. Anticipatory Bail Application No.1213 of 2021 is allowed;

ii. In the event of arrest of the applicant in Crime No.338/2021 registered with Satara Police Station, District Aurangabad, the applicants be released on bail on executing PR bond in the sum of Rs. 25,000/- each with one or more sureties in the like amount;

iii. The applicant shall attend the investigating officer on 27th 28th and 29th December, 2021 between 11.00 a.m. to 1.00 noon and thereafter as and when called for till filing of the charge sheet.

iv. Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)

JPC