

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 608 OF 2019**

Amit Krishanlal Nagpal

.....Applicant

Vs.

State Of Maharashtra,

.....Respondent

WITH**INTERIM APPLICATION NO. 1888 OF 2021****IN****ANTICIPATORY BAIL APPLICATION NO. 608 OF 2019**

Vantage Buildcon Pvt. Ltd.

.....Applicant
(Intervenor)**IN THE MATTER BETWEEN-**

Amit Nagpal

.....Applicant

Vs.

State Of Maharashtra

.....Respondent

Mr. Manoj Mohite, Senior Advocate i/by Sidheshwar Biradar for the Applicant in ABA No. 608 of 2019.

Mr. Drupad S. Patil a/w Mr. Pavan Patil for the Informant.

Mr. Akshay R. Kapadia i/by Rahul S. Kadam for the Applicant in Interim Application No.1888 of 2021.

Smt. Veera Shinde APP for the Respondent-State.

CORAM : A. S. GADKARI, J.**RESERVED ON : 25th AUGUST, 2021****PRONOUNCED ON : 21st SEPTEMBER, 2021.****PC:-**

This is an Application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in C.R. No.330 of 2018 dated 8th December, 2018, registered with Chandan Nagar Police Station, Pune City, for the offence punishable under Sections 420, 468 and 471 of the Indian

Penal Code.

2 Heard Mr. Mohite, learned senior counsel for the Applicant in ABA No. 608 of 2019, Mr. Drupad Patil a/w Mr. Pavan Patil for the informant, Mr. Kapadia learned counsel for the Applicant in IA No.1888 of 2021, Smt. Shinde APP, for the Respondent-State. Perused entire record and the Affidavit dated 1st April, 2019 filed by Mr. Shridhar P. Bhosale, Police Sub-Inspector/Investigating Officer attached to Chandan Nagar Police Station, Pune City.

3 By an Order dated 12th March, 2019, the Applicant was granted interim relief and was directed to mark his presence to the Investigating Officer on 16th March 2019 and 17th March, 2019 between 10.00 a.m. to 4.00 p.m. and thereafter as and when called for, to co-operate in the process of investigation.

4 The first information report is lodged by Shri. Ramdas A. Kamathe.

It is the prosecution case that, land bearing survey No.6 admeasuring 4600 sq. fts. lying and situate at village Kharadi, District Pune was owned by Mr. Kadar Allabaksh Kagadi. On 16th December, 2004, said Mr. Kadar Kagadi executed a Development Agreement and irrevocable Power of Attorney in favour of the informant. The said documents were registered with the Joint Sub-Registrar of Assurances, Haveli No.7 at serial Nos.5608 of 2004 and 5609 of 2004 respectively. Mr. Kadar Kagadi

thereafter, handed over physical possession of the said land to informant. Adjoining land to the land of the informant admeasuring about 5346 sq. fts. was owned and occupied by the Applicant herein. In the year 2007, the Applicant approached informant and submitted a proposal for joint development of the said two lands owned/occupied by the informant and Applicant. Applicant represented informant that, if the said two lands are developed jointly, they will get huge benefit out of it and won over the trust of the informant.

Accordingly, Applicant and informant formed a firm namely '*M/s. Nagpal Associates*' on 24th April, 2007. It was decided to construct building/s on the said landed property and to name the said project as '*Meadows Supreme*'. It was also decided that, the costs of construction and profits gained therefrom, were to be shared equally. In December, 2007, the Applicant approached informant and informed him that, M/s. Vantage Buildcon Pvt. Ltd. represented through its Authorized Director Mrs. Manju Mohan has given proposal to purchase entire land along with proposed building. Accordingly, an Agreement to Sale dated 29th December, 2017 was executed between M/s. Vantage Buildcon Pvt. Ltd. through its Authorized Director Mrs. Manju Mohan, the Applicant herein and the informant. It was specifically agreed therein that, after receipt of entire consideration from M/s. Vantage Buildcon Pvt. Ltd., the possession of the said property would be handed over to the said company by executing a

sale deed.

Thereafter, on 27th April, 2009 the said Agreement to Sale along with Confirmation Deed came to be registered with the Sub-Registrar of Assurances, Haveli No.8, under registration No.2722 of 2009 and in the absence of informant. The informant, subsequently executed Confirmation Deed on 2nd May, 2009. It is alleged that, on 4th October, 2017, the Applicant executed Sale Deed in favour of M/s. Vantage Buildcon Pvt. Ltd., bearing registration No.9640 of 2017 with the Sub-Registrar of Assurances, Haveli No.11. The said fact came to the knowledge of the informant when he received notice dated 23rd February, 2018 from the Advocate of the Applicant, informing the Applicant that, the Sale Deed of the said property has been executed and the Applicant has signed it on behalf of informant as his Constituted Attorney.

The informant thereafter took search and inspection of the said document wherein he noticed that, the Applicant being representative and partner of M/s. Nagpal Associates, has signed the said document. The informant realized that, without having any authority and though the Power of Attorney was executed by Mr. Kadar Kagadi in favour of the informant, the Applicant with a view to cause wrongful loss to the informant and for wrongful gain to himself, signed the said document and has accepted entire consideration from the said company namely M/s. Vantage Buildcon Pvt. Ltd.. In this premise, present crime is registered.

5 Mr. Mohite, learned senior counsel for the Applicant submitted that, the Applicant has signed the said Sale Deed dated 4th October, 2017 in his capacity as a partner of '*M/s. Nagpal Associates*'. That, under the provisions of the Partnership Act, the Applicant was and is entitled to sign on behalf of the said partnership firm. He submitted that, as a matter of fact, the informant has already filed Special Civil Suit No.1404 of 2018 on 30th October, 2018 for declaration that, the said Sale Deed is not binding on him and subsequently, the present crime has been lodged after about two months. He submitted that, dispute in question is civil in nature and therefore, the Applicant may be protected by pre-arrest bail.

6 Per contra, the learned APP vehemently opposed the Application and pointed out the necessary and relevant material available against the Applicant. She submitted that, the Applicant has signed the said Sale Deed dated 4th October, 2017 as a Power of Attorney Holder/ Constituted Attorney of Mr. Kadar Kagadi and has accepted entire consideration towards the said transaction. That, the Applicant did not deposit the said consideration received by him in the account of the said partnership firm namely '*M/s. Nagpal Associates*' and has defalcated it for his personal benefit. She submitted that, there is a sufficient material available on record to show the complicity of the Applicant in the present crime and for unearthing the entire truth behind it, his custodial interrogation is necessary.

7 Mr. Drupad Pail, learned counsel for the informant, in addition to the submissions advanced by the learned APP, submitted that, the Applicant in a systematic manner has committed cheating against the Applicant and after receiving the entire amount of consideration, has defalcated it for his personal benefit. He therefore prayed that, the present Application may be dismissed.

 Mr. Kapadia learned counsel for the Applicant (M/s. Vantage Buildcon Pvt. Ltd.) in Interim Application No.1888 of 2021 also supported the submissions advanced by the learned APP and Mr. Drupad Patil and prayed that, the present Application may be dismissed.

8 Perusal of record indicates that, in view of Clause No.7 of the Articles of Agreement dated 24th April, 2007 executed between the Applicant and the informant, all agreement for sale of flats/shops/units in the building to be constructed on the said properties were to be entered in the name of '*M/s. Nagpal Associates*' and signed by both the partners thereto. That, all the payments which were to be received by both the partners to the said agreements from the prospective purchasers of the said flats/shops/units, were to be received in the name of '*M/s. Nagpal Associates*' only.

 The record clearly indicates that, the Applicant executed sale deed dated 4th October, 2017 in favour of the M/s. Vantage Buildcon Pvt. Ltd. by accepting valuable consideration and as per the submission of the

learned counsel for the informant, an amount of Rs.3 crores 40 lakhs was paid by M/s. Vantage Buildcon Pvt. Ltd. to the Applicant. Applicant signed the said sale deed dated 4th October, 2017 as a Constituted Attorney of Mr. Kadar Kagadi. As a matter of fact, Mr. Kadar Kagadi had executed Power of Attorney dated 16th December, 2004 in favour of the informant Mr. Ramdas A. Kamathe and not in favour of the Applicant.

The Applicant has thus, committed an act of cheating not only against the informant but also against M/s. Vantage Buildcon Pvt. Ltd. and has accepted substantial consideration from it. Applicant after accepting the said amount had not deposited it in the account of M/s. Nagpal Associates and as per the prosecution, for his personal benefit he has defalcated it. It thus clearly appears that, the Applicant has committed the said act thereby causing wrongful gain to himself and wrongful loss to the informant.

As far as the submission of the learned senior counsel for the Applicant that, the allegation against the Applicant is of civil nature is concerned, in view of the clear case made out by the prosecution that, the Applicant has committed an act of cheating against the informant, I am not in agreement with the said submission advanced by the learned senior counsel for the Applicant in that behalf.

9 Even though by interim Order dated 12th March, 2019, the Applicant was directed to mark his presence to the Investigating Officer, as

per the prosecution, till date the Applicant has not produced the said alleged document namely Power of Attorney executed in his favour by Mr. Kadar Kagadi and the same is yet to be recovered. It *prima facie* appears that, the Applicant in a pre-planned manner induced the informant to enter into joint venture and has subsequently cheated him for huge amount and the said amount is also yet to be recovered from him. There is sufficient material available on record to indicate complicity of the Applicant in the present crim.

10 After taking into consideration the entire material available on record, gravity of the offence and serious allegations against the Applicant, this Court is of the considered view that, the Applicant does not deserve to be protected by pre-arrest bail.

Application is accordingly rejected.

11 In view of disposal of the Anticipatory Bail Application itself, nothing survives in Interim Application No.1888 of 2021 and the same is also disposed off.

12 At this stage, Mr. Biradar, the learned Advocate for the Applicant in ABA No. 608 of 2019, prayed to continue the interim relief granted earlier for the period of two weeks.

For the reasons stated in the Application, said prayer is rejected.

(A.S. GADKARI, J.)