

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1528 OF 2019

Rahul Jindal s/o Surinder Jindal ..Applicant

V/s.

The State of Maharashtra & Anr. ..Respondents

Mr.Chandrani Prasad a/w Mr.Ashok Mishra, Mr.Viral Bhanushali
i/b M/s.Solicis Lexfor the Applicant.

Mrs.Veera Shinde, APP for the Respondent No.1 -State.

Mr.Murtaza Nazmi a/w Mr.Tousin Monis i/b ALJ Partners for
Respondent No.2.

Mr.Suraj Jadhav, PSI Rabale MIDC, Navi Mumbai Police Station
in Cr.No.143 of 2019 is present in Court.

CORAM : C.V. BHADANG, J.

DATE : 4th SEPTEMBER 2021

P.C.

. The applicant who is a co-accused apprehending arrest in connection with the investigation of Crime No.I-143 of 2019 of Rabale MIDC Police Station, Thane under Section 420 read with 34 of the Indian Penal Code, is seeking anticipatory bail. The aforesaid offence was registered against the applicant and his father Surinder Jindal, who has expired after the filing of the present application.

2. The complainant Dr.Pradeep Mahajan had proposed to reconstruct a hospital at R-831, T.T.C., Industrial area, Thane Belapur Road, Rable, Navi Mumbai Dr.Mahajan with the intervention of Shri.Deepak Dongre had appointed the applicant and Surinder Jindal as contractors for reconstruction of the said hospital. It appears that initially the proposed hospital was of three story and accordingly a Memorandum of Understanding (MOU) dated 21st April 2018 was executed between the parties and the agreed amount payable to the applicant was Rs.3.75 crores. The construction was agreed to be completed within a period of 210 days. The complainant paid an amount of Rs.1 Crore on 24th May 2018 and another Rs.1 Crore on 7th August 2018. However, according to the complainant the construction was started belatedly in September 2018. It appears that the complainant had decided to add two more floors to the building and a fresh MOU was executed on 4th August 2018 and the cost of construction was increased to Rs.5,39,12,887/-. There was yet another proposal for addition of two more floors and a corrigendum was executed on 14th January 2019 and the cost of construction was raised to Rs.7,62,71,775/-. Indisputably the complainant has paid a total amount of Rs.3.65 Crores to the applicant. As per the complaint dated 16th June 2019 lodged by the complainant the allegation is that the Loom Craft Systems Pvt. Ltd. company of the applicant and his father had failed to get the building plan sanctioned. There was a delay in starting the

construction. The applicant had also refused to get the MOUs registered. The quality of construction was not upto the mark and lastly the applicant had failed to make payment of the contractor, sub-contractor and the architect. On the basis of the said complaint the offence is registered against the applicant.

3. I have heard learned counsel for the applicant, the learned Additional Public Prosecutor and the learned counsel for the complainant/intervenor. With the assistance of the learned counsel for the parties, I have gone through the record.

4. The record discloses that by an order dated 24th July 2019 interim protection has been granted to the applicant on the ground that the applicants had expressed willingness and has deposited a total amount of Rs.1 Crore before this Court. The order dated 24th July 2019 records that the interim protection is granted in view of the deposit of the amount, without going into the merits of the matter.

5. Be that as it may, the learned counsel for the applicant submitted that the dispute is of a civil nature and the complainant by virtue of his notice dated 2 April 2019 has terminated the two MOU's and the Corrigendum dated 14 January 2019 and has sought referral of the dispute to arbitration in terms the clause of the arbitration included in the MOU's. The learned counsel has

referred to certain correspondence between the parties in order to demonstrate that the delay was on account of the circumstances beyond the control of the applicant and certain lapses on behalf of the complainant.

6. The learned Additional Public Prosecutor submitted that the applicant has accepted an amount of Rs.3,65,00,000/- and has not carried out the construction as agreed. The learned counsel for the intervenor strenuously urged that the applicants were granted the contract as they professed to be the experts in Pre Engineered Buildings and had failed to abide by the terms of the MOU. The learned counsel for the applicant referred to certain photographs, in order to show that the construction is of substandard quality. The learned counsel for the applicant points out that the structure was pre-fabricated at Ghaziabad, Uttar Pradesh and installed at site. It was pointed out that the structure is shown to have corroded which in the submission of the learned counsel, shows that the applicant had failed to use steel in the pre-fabricated structure. The learned counsel states that since inception the applicant has failed to abide by the terms of the MOU which shows intention to cheat the complainant.

7. The learned Additional Public Prosecutor pointed out that there are criminal antecedents to the discredit of the applicant. It is pointed out that there is an offence registered with

Police Station, North Goa with the similar allegation under Section 420,406,504 and 506(ii) of the IPC against the applicant being Crime No.82 of 2019.

8. The learned counsel for the applicant points out that after the investigation a final summary is filed in the said offence.

9. I have carefully considered the circumstances and the submissions made. Prima facie it appears that the dispute is regarding the alleged non compliance of the terms of the two MOU's and one Corrigendum. In my considered view the dispute appears to be predominantly of civil nature. I am afraid the contention about the sub-standard nature of the construction cannot be decided or gone into in the application for the anticipatory bail. Admittedly the complainant has invoked the arbitration clause.

10. Considering the overall circumstances and *prima facie* having regard to the fact that the dispute appears to be predominantly of a civil nature I do not find that the custodial interrogation of the applicant is necessary in the matter. In the result, the application is disposed of in terms of the order dated 24 July 2019, subject to the condition that the applicant shall attend the investigating officer as and when required and shall co-

operate in the investigation and shall not tamper with the prosecution evidence/witnesses.

11. It is made clear that the observation herein are for the limited purpose of deciding the prayer for anticipatory bail and shall not be binding in any other proceedings/stage.

C.V. BHADANG, J.

**NILAM
SANTOSH
KAMBLE**

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NILAM SANTOSH
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