

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

**ANTICIPATORY BAIL APPLICATION NO. 2151 OF 2019
WITH
ANTICIPATORY BAIL APPLICATION NO. 2152 OF 2019
WITH
ANTICIPATORY BAIL APPLICATION NO. 2153 OF 2019
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ANTICIPATORY BAIL APPLICATION NO. 2154 OF 2019
WITH
ANTICIPATORY BAIL APPLICATION NO. 2155 OF 2019**

Abhay C. BhandariApplicant

v/s.

The State of Maharashtra and anr.Respondents

Mr. Ashok M. Bhatia for the Applicant.

Mr. Tushar Kochale for the Complainant.

Mr. S.V.Gavand, APP for the Respondent-State.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : 7th September, 2021.

P.C.

1. By these Applications filed under Section 438 of Cr.PC., the Applicant is seeking pre-arrest bail apprehending his arrest in Crime Nos. 406 of 2019, 400 of 2019, 404 of 2019, 405 of 2019 and 407 of 2019, registered at Borivali Police Station for the offences under Section 420, 467, 468, 471 r/w. 34 of Indian Penal Code. The aforesaid crimes have been registered against the

Applicant pursuant to the FIRs lodged by Respondent No.2 in the respective application, hereinafter referred to as 'the Complainants'.

2. Heard Mr. Ashok M. Bhatia, learned Counsel for the Applicant. He states that there is no prima facie material on record to indicate that the Applicant is involved in commission of the said crime. He states that the first informants have not given details of any of the documents which were allegedly forged. It is further stated that the alleged transaction is of the year 2011 and the complaint is filed in the year 2019. Learned Counsel for the Applicant further states that the Applicants were unable to develop the property because of the Civil litigation between Munshi family and Rajan Mehta, and particularly in view of the status quo order passed by this Court in Writ Petition No.10652 of 2012.

3. Per contra, learned APP and learned Counsel for the Complainants state that the litigation between Munshi Family and Rajan Mehta was pending since the year 2007. It is stated that the

Applicant entered into agreements with the Complainants by suppressed litigation which was between the parties, and entered into an agreement with the Complainants showing a forged plan. It is alleged that Respondent No.2 state that the litigation between Munshi Family and Rajan Mehta is from the year 2007. It is stated that the Applicant suppressed the fact that there was litigation between the parties, and entered into an agreement with the first informants showing a forged plan representing that he would develop the property under CTS Nos.556, 556/1, 557, 557/1, 558 and 558/2 of Village Kanheri, Kulupwadi, Borivali (East). It is stated that the said land belongs to A.P. Dinshaw Trust and that the material on record indicates that the said trust has not given No Objection for development of the said property.

4. Learned APP and learned counsel for Respondent No.2 submits that in the year 2015, the Applicant had entered into an agreement with Respondent No.2/respective Complainants and had assured to repay the amount and had accordingly issued cheques in favour of the Complainants. The said cheques have been dishonoured and proceedings under Section 138 of the N.I.

Act have been initiated against the Applicant. Learned APP has further submitted that the Applicant had filed an undertaking before this Court to repay the amount to each of the Complainants by paying Rs.2,20,000/- each as first installment and the balance amount in five installments, by issuing Demand Draft of Rs.2,20,000/- each. The Applicant has not complied with the said undertaking as a consequence of which the interim order was vacated. Learned APP further states that subsequent thereto, an attempt was made to arrest the Applicant. He has placed on record a report from Police Inspector, Borivali Police Station, Mumbai which indicates that the flat wherein the Applicant was residing has been sold and that the present whereabouts of the Applicant are not known. He submits that the conduct of the Applicant would not justify grant of bail.

5. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

6. A perusal of the FIR filed by the Complainants prima facie indicates that the Applicant was known to them for several years.

Sometime in the month of March-April 2011, the Applicant approached them and represented that he and his partners are planning to develop a plot under CTS Nos. 556, 556/1, 557, 557/1, 558 and 558/2 of Village Kanheri. It was also represented to them that all necessary approvals, consent forms from the slum dwellers were obtained. They were shown a copy of the Annexure II and layout plan and they were informed that the same has been approved by the concerned authorities and that all other formalities had been complied with. In view of the representation made by the Applicant and the other partners, the Complainants agreed to purchase flats in the building/tower proposed to be constructed by the Applicant and the other partners as of M/s. Madhav Builders & Developers. The Complainants entered into MOU dated 02.05.2011. The Complainant in ABA/2151/2019 paid an amount of Rs.10,00,000/-, whereas in ABA/2152/2019 the Complainant has paid Rs.18,00,000/-, in ABA/2154/2019 the Complainant has paid Rs.18,00,000/- and in ABA/2155/2019 the Complainant has paid Rs.18,00,000/- each towards the earnest money/ part payment of sale consideration. The Applicant thereafter issued allotment letters on behalf of the partnership

firm.

7. The Complainants have alleged that when they visited the site to verify the status of development/construction, they realized that the said partnership firm was yet to receive any approval from the concerned authorities. The Applicant and the other partners continued giving false assurance to these complainants that they would proceed with the development and construction. The Complainants realized that the Applicant and the other partners were making false representations by taking undue advantage of long standing relationship. The Complainants conducted inquiry and realized that the firm had no right, title or interest to develop the said plot. It is also stated that the slum dwellers had not given any consent in favour of the said partnership firm and no proposal of the partnership was pending with the office of the SRA. When confronted, the Applicant issued cheques towards refund of the amount received towards part payment of the said construction. The records reveal that the said cheques were dishonoured and that Complaints under Section 138 of N.I. Act are filed against the Applicant and the same are pending.

8. The records also prima facie indicate that as per the survey record, the subject land belongs to Dinshaw Trust. The Agreement dated 26.04.2011 between the partnership firm and the Rehman And Ganesh Kripa Co-operative Housing Society also indicates that the Applicant was well aware of this fact. The Applicant had entered into an agreement with the Society in respect of the said property even though the owners of the property have not given No Objection for development of the said properties.

9. Though the status-quo order in Writ Petition No.10652/2012 was passed in the year 2013, it is on record that the litigation was pending since the year 2007. The Applicant had entered into agreements with the Complainants by suppressing this material fact.

10. It is also seen that Annexure II has not been issued, layout plan has not been prepared, despite which the Applicant had represented to the Complainants that they would develop the property which was otherwise owned by the trustees of Dinshaw Trust and thus induced them to make the payment.

11. The material on record thus prima facie proves involvement of the Applicant in the said crime. The material on record also indicates that when questioned, the Applicant and other partners had agreed to refund the money and issued cheques. It is on record that the said cheques have been dishonoured.

12. The records also indicate that on 17.10.2019 the Applicant had tendered affidavit-cum-undertaking before this Court, wherein he had undertaken to pay to the Complainants the principal amount along with interest i.e., in ABA/2151/2019 the Applicant had undertaken to pay total amount of Rs.22,12,624/- (principal amount of Rs.10,00,000/- and interest), in ABA/2152/2019 the Applicant had undertaken to pay total amount of Rs.55,45,672/- (principal amount of Rs.27,00,000/- and interest), in ABA/2153/2019 the Applicant had undertaken to pay total amount of Rs.35,05,085/- (principal amount of Rs.18,00,000/- and interest), in ABA/2154/2019 the Applicant had undertaken to pay total amount of Rs.38,05,033/- (principal amount of Rs.18,00,000/- and interest), in ABA/2155/2019 the Applicant

had undertaken to pay total amount of Rs.38,05,033/- (principal amount of Rs.18,00,000/- and interest).

13. The Applicant had assured that an amount of Rs.2,20,000/- would be paid to each of these Complainants on 16.10.2019 and that the balance amount would be paid by issuing five Demand Drafts dated 15.12.2019, 15.03.2019, 15.06.2019, 15.06.2020 and 15.09.2020. A specific undertaking was given to this Court that the Applicant would not make any default in terms of payment and all the payments would be honoured as per the schedule mentioned in the undertaking. The Applicant had also stated that interim relief granted by this Court would stand vacated in case of default in making the payment.

14. It is to be noted that apart from depositing the initial installment of Rs.2,20,000/- each, no further payment has been made. No extension was sought to make further payment, nor any reasons have been assigned for not making the payment or for not abiding by the undertaking given to this Court. Hence, this Court by order dated 25.08.2021 vacated the interim protection granted

by this Court vide order dated 17.10.2019.

15. Learned APP states that after the interim order was vacated, an attempt was made to arrest the Applicant. It is stated that the Applicant was not found at the address mentioned in the cause title and upon inquiries it was learnt that the Applicant has sold the said flat, and that one Jitendra Shivilal Mali is in possession of the said flat. The Applicant has not complied with the undertaking despite receipt of sale consideration. It is also stated that the present whereabouts of the Applicant are not known. Learned Counsel for the Applicant, upon instructions, concedes that the Applicant has sold the said flat and that he is not residing at the said address. It is seen that the Applicant has not amended the cause title and has not informed the Court about change of address and present location. The conduct of the Applicant does not justify grant of discretionary relief in his favour.

16. Under the circumstances, the Anticipatory Bail Applications are dismissed.

(ANUJA PRABHUDESSAI, J.)

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SALGAONKAR
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