

PMB

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

ANTICIPATORY BAIL APPLICATION NO.2629 OF 2019

Surendra Motiram Mhatre .. Applicant

vs.

The State of Maharashtra .. Respondent

Mr. R.D. Suryawanshi for the Applicant.

Mr. N.B. Patil, APP for the State.

Mr. V.R. Sonawane, PSI, Vishnu Nagar Police Station, Dombivali (West) is present.

CORAM : M.S.KARNIK, J.

DATE : SEPTEMBER 29, 2021

P.C.

Heard learned counsel for the parties.

2. The complainant registered the FIR against the Applicant on 18.09.2019 for the alleged offences punishable under Sections 406 and 420 of the Indian Penal Code ('IPC' for short) and under Sections 3, 4, 5, 8 and 13 of the Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 registered as C.R. No.I-217 of 2019. Without burdening this order with all the facts, suffice it to state that the complainant had booked a flat in the project which was to be constructed by the Applicant at Reti Bunder Road, Dombivali (West). The complainant alleged that the flat was not handed over

to the complainant though the amount of Rs.14,50,000/- was paid to the Applicant. The total consideration towards the said flat is around Rs.30,00,000/-.

3. The Applicant contended that as a result of stay to all the construction activity granted by this Court in Public Interest Litigation No.182 of 2009 on 13.04.2015 in the area in view of the failure of the Corporation to make suitable arrangement for a dumping ground, the project got delayed. The Applicant never intended to cheat the complainant. When this Application was listed on 29.11.2019, the following order came to be passed by this Court :-

“Heard.

2. At the request of Learned Counsel for the applicant, stand over to 2nd December, 2019 to enable the applicant to file an undertaking interalia stating that the applicant shall pay principal amount of Rs.14,50,000/- to the complainant by a Demand Draft.

3. Stand over to 2nd December, 2019.”

4. The complainant had appeared through her Advocate in this Court by filing the Intervention Application i.e. Interim Application No.01 of 2019 which came to be allowed on 20.12.2019. On 20.12.2019, this Court passed the following order :-

“Inadvertently in the order dated 3rd December,2019, amount is stated as Rs.14,15,000/-. The correct amount is Rs.14,50,000/-.

2. Corrections be carried out accordingly.

3. The learned counsel for the applicant has tendered Demand Draft drawn in the name of the complainant for Rs.14,50,000/-. Copy of the Demand Draft is taken on record and marked **'X-1' for Identification.**

4. Complainant is present. Demand Draft is handed over to her.

5. In view of the settlement arrived at between the parties, following order:

(i) In the event of arrest of the applicant in Crime No. I-217 of 2019 registered with Vishnu Nagar Police Station, he shall be released on executing PR bond in the sum of Rs.25,000/- with one or more sureties in like amount.

(ii) He shall report to the Investigating Officer as and when called and shall co-operate with investigation.

6. Stand over to 4th February, 2020."

5. Learned counsel for the Applicant submits that pursuant to the order passed by this Court, he abided by the directions of this Court and co-operated with the investigation. There is nothing on record to controvert this stand of the Applicant. Considering that the complainant has accepted the Demand Draft of Rs.14,50,000/- which was part of the consideration paid towards the purchase of the flat, and having regard to the facts and circumstances of the present case, the custodial interrogation of the Applicant is not necessary. The complainant did not remain present on the last occasion or even today to contest the Application. The interim protection is operating since 20.12.2019. Hence, the following order :-

ORDER

(i) The interim order dated 20.12.2019 passed by this Court is confirmed.

(ii) In the event of the arrest of the Applicant in connection with C.R. No.I-217 of 2019 registered with Vishnu Nagar Police Station, he shall be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(iii) The Applicant shall report to the Investigating Officer as and when called and shall co-operate with the investigation.

6. The Anticipatory Bail Application is disposed of.

(M.S.KARNIK, J.)

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signed by
PRADNYA
MAKARAND
BHOGALE
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