

PMB

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

ANTICIPATORY BAIL APPLICATION NO.2666 OF 2019

Mahesh Nanasaheb Atole .. Applicant
vs.

The State of Maharashtra .. Respondent

Mr. Amol A. Deshpande for the Applicant.

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

Mr. Yogesh Langute, API, Baramati Taluka Police Station, Pune
(Gramin) is present.

CORAM : M.S.KARNIK, J.

DATE : SEPTEMBER 30, 2021

P.C.:-

Heard learned counsel for the parties. The Investigating Officer is present.

2. The Applicant seeks pre-arrest bail in respect of an offence punishable under Sections 420, 468, 504, 506 of Indian Penal Code registered with Baramati Police Station being FIR No.0671 dated 18.08.2019.

3. It is the case of the complainant that the Applicant had executed an agreement of sale dated 20.06.2015 in his favour in respect of a row house to be constructed by the Applicant.

The Applicant is a developer. An earnest amount of Rs.7 lakhs was paid at the time of execution of the agreement of sale. The agreement of sale is a notarised document. It is the case of the complainant that he realised that the row house was sold to another person named Sandeep Rajaram Malshikare in the year 2016 for a consideration of Rs.18 lakhs. Therefore, the complaint of cheating.

4. It is the contention of learned counsel for the Applicant that the complainant is a money lender. The Applicant was in need of money and therefore from time to time he had obtained loan from him. As a security, the agreement of sale was entered into. It is the case of the complainant that the monies which were advanced to the Applicant from time to time were returned with interest to the complainant. Despite repeated requests, the agreement of sale was not cancelled. In the application dated 14.12.2018, there are allegations of harassment at the instance of the complainant. It appears that the FIR was not registered even after the application dated 14.12.2018 was made by the Applicant. The FIR at the behest of the Applicant ultimately came to be registered on 18.08.2019 at 21.17 hours under Sections 323, 504, 506 read with Section 34 of Indian Penal Code and Section 39 of the Maharashtra Money-Lending (Regulation) Act, 2014.

5. It is thereafter on the same date that the complainant filed the FIR No.0671 dated 18.08.2019 at 23.37 hours alleging that the property has been sold to another person in the year 2016 despite the agreement of sale in complainant's favour.

6. In the present case there are cross complaints. The complaint filed by the Applicant is first in point of time. The record indicates that since 14.12.2018, the Applicant has been requesting the Police to lodge the FIR against the complainant. It is only on 18.08.2019 that the FIR is registered.

7. Though the complainant was aware about the row house being sold to third person in the year 2016 itself, the FIR is filed by him on 18.08.2019 and that too after the complaint is made by the Applicant. From the record, it does not appear that any civil proceedings are filed by the complainant in respect of the agreement of sale.

8. In this view of the matter, having regard to the facts and circumstances of the present case, the custodial interrogation of the Applicant is not required as the Applicant has stated that he has executed the agreement of sale, but in his submission the same was a security for the repayment of the loan that was

taken from the complainant. According to the Applicant the entire loan has been repaid with interest. The Applicant has been granted interim protection since 05.12.2019 by this Court. Learned counsel for the Applicant submits that he abided by the conditions imposed by this Court while granting the interim protection.

9. Hence, the following order :-

ORDER

- (i) The interim order dated 05.12.2019 passed by this Court is confirmed.
- (ii) In the event of the arrest of the Applicant in connection with C.R. No.0671 of 2019 registered with Baramati Police Station, he shall be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one or more sureties.
- (iii) The Applicant shall report to the Investigating Officer as and when called.

10. The Anticipatory Bail Application is disposed of.

(M.S. KARNIK, J.)