IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [ABA] NO. 582 OF 2021.

Mahendra Tulsiram Gawai.
-**Versus-**
State of Maharashtra, through P.O. Butibori, District Nagpur.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri S.P. Dharmadhikari, Senior Advocate with Shri U.P. Dable, Advocate for the Applicant.
Shri A.M. Deshpande, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.
DATE : OCTOBER 14, 2021

Heard.

2. In anticipation of arrest in Crime No.367/2021 registered with the Non-applicant Butibori Police Station, District Nagpur for the offence punishable under Sections 420, 468 and 471 of the Indian Penal Code, the applicant is praying for grant of pre-arrest bail.

3. It is the prosecution case that the informant was acquainted with one Faizal Ali resident of Kolkatta, who was erstwhile working as Sales Manager with Infratech Real Estate Pvt. Ltd. The applicant was one of the Director of said Firm. The informant came to know from Faizal Ali that Infratech

Real Estate Pvt. Ltd. was having associate companies namely Tirumala Developers Pvt. Ltd. and Venkatesh Assets Maximer Pvt. Ltd. These companies were indulging into real estate business. It was represented to the informant that the plotting work at Andaman was going on through Venkatesh Assets. The informant was intending to purchase a plot at Andaman, hence in the year 2013 under agreement he has paid a total amount of Rs.24 lakhs for booking of the plot. Though the informant was assured to execute sale deed in proximity, however, till the year 2015 the sale deed was not executed.

4. It was informed that there was some problem in the layout at Andaman plots, and therefore, instead of refund of amount it was suggested to invest the said amount in the layout of Tirumala Developers Pvt. Ltd at Mouza Shirul, District Nagpur. The said layout / plots were on Khasra No.101 and 102 situated at Mouza Shirur. Accordingly, the informant has booked the plots in which the earlier amount was appropriated. As per the agreement, the informant paid near about Rs.46 lakhs towards booking of the plots. However, it was again represented that there is a problem in the layout

and informant was asked to purchase the plot in Khasra No.116 owned by the Venkatesh Assets. Accordingly again third agreement dated 07.12.2015 was executed with Venkatesh Assets.

5. Time and again the informant requested for execution of the sale deed, however, it was not done. It is informant's case that he has paid total amount of Rs. 78,52,000/- through cheque and RTGS, however, no plot was assigned, and therefore, he has been cheated.

6. It is the contention of the informant, that the applicant is the Director of Infratech Real Estate Pvt. Ltd., which is connected with both the concerns namely Tirumala Developers Pvt. Ltd and Venkatesh Assets Maximer Pvt. Ltd. The informant states that from time to time he has been misrepresented and huge amount has been duped.

7. The learned counsel appearing for the applicant by claiming innocence submitted that he is no way concern with Venkatesh Assets Maximer Pvt. Ltd. It is submitted that the applicant was partner of Tirumala Developers Pvt. Ltd. When the informant has entered into third agreement with Venkatesh Assets, at that time the amount which was received,

has been adjusted in third agreement executed with Venkatesh Assets. He would submit that at the time of second agreement with Tirumala, they received only Rs.20 lakhs, out of which Rs. 12 lakhs has been transmitted to Venkatesh Assets. Moreover, it is submitted that neither the applicant is Director of Venkatesh Assets, nor he has executed any agreement. Thus, by claiming innocence he seeks pre-arrest protection.

8. It is primely submitted on behalf of the applicant that he is no way concern with Venkatesh Assets, with whom third agreement was executed. According to the applicant, besides an amount of Rs.20 lakhs, rest of the amount which was paid to Tirumala Developers was appropriated in the third agreement with Venkatesh Assets. Since the applicant has already transferred the amount of Rs.12 lakhs to Venkatesh Assets, therefore no criminal liability can be attracted against him.

9. Close perusal of the first information report prima facie indicates that the applicant was a Director of Infratech Real Estate Pvt. Ltd., which appears to have sister concerns namely Tirumala Developers and Venkatesh Assets Maximer Pvt. Ltd.

The entire chain of event discloses close connection of both Tirumala Developers and Venkatesh Assets with each other. There was no interse document in between both the concern about appropriating the amount of earlier agreement in the new one. The transaction as proceeds, prima facie indicates that there was interse connection since from time to time separate agreements were executed and each time earlier amount was appropriated. Moreover, the learned A.P.P. has pointed out that Nitin Gedam was looking after both the concern as he has signed the documents regarding both establishments. Though it is shown that the Directors of Venkatesh Assets are different, however, it is a matter of investigation whether both concern were acting under one roof.

10. Admittedly the second agreement was with Tirumala Developers relation to plots at Khasra Nos. 101 and 102, and the third agreement with Venkatesh Assets was relating to Khasra No.116 of Mouza Shirul. Learned A.P.P. has invited my attention to some papers from case diary to show that Khasra No.116 was owned by Tirumala Developers and it was already sold on 04.03.2013 in favour of one Agrawal, meaning thereby the applicant who was

partner of Tirumala Developers was aware that land Khasra No.116 was not owned by Venkatesh Assets, still they suggested and accordingly amount was appropriated in third agreement with Venkatesh Assets, which does owns the said piece of land.

11. The contents of first information report prima facie discloses that both establishments were working hand in glove, since they suggested informant to invest in another project. The amount involved is huge sum of Rs.78.52 lakhs. Apparently, the complainant was cheated for huge sum which requires thorough investigation. Unless there is custodial interrogation of the applicant, his definite role and the manner in which the transaction took place along with changing of money cannot be ascertained. Considering the nature of accusation and seriousness of offence, it is not a fit case for grant of pre-arrest bail. In view of that, Criminal Application being devoid of merit, stands rejected.

12. All pending Misc. Cri. Applications also stand disposed of.

JUDGE

Rgd.