

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

ANTICIPATORY BAIL APPLICATION NO. 537 OF 2022

Dnyandev Yetala Waghmare

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. Ashok M. Sarogi, for the Applicant.

Mrs. A.A.Takalkar, APP for the State.

**CORAM : ANUJA PRABHUDESSAI,J.
DATED : 21st MARCH, 2022.**

P.C.

1. This is an application under Section 438 Cr.P.C. filed by the aforesaid Applicant seeking pre-arrest bail in C.R.No. 443 of 2021, registered with Nehru Nagar Police Station, Mumbai for the offence under Section 420 of IPC.

2. The aforesaid crime was registered pursuant to the FIR lodged by one Pradeep Shetty. It is the case of the Complainant that in the year 2014, he was in search of a room on rent. He got acquainted with the Applicant, who provided him a room. Subsequently, the Applicant took from the Complainant cash of Rs.26,60,000/- on the pretext that the same was required for medical treatment of his wife, and further an additional amount with an assurance that he would give him a room in MHADA project. It is alleged that the Applicant had also taken amount

of Rs.6,75,000/- from Nandakishore Shetty-relative of the Complainant, Rs.6,00,000/- from his colleague Krishna Gowda, and Rs.7,00,000/- from Shilabai Rajesh Sugaji. The Applicant has thus received total amount of Rs.46,30,000/-. The Complainant has stated that despite receipt of the said amount, the Applicant has neither provided the room in MHADA project, nor returned the money. He has further stated that he had contacted the Applicant for refund of the money, but the Applicant started avoiding him. Later the sons of the Applicants stated that they were aware of receipt of Rs.26,60,000/- and they assured to repay the same within one year. It was also stated that in the event they were unable to repay the money, they would put the Complainant in possession of two rooms belonging to their father.

3. Mr. Sarogi, Counsel for the Applicant states that the entire loan transaction of cash payment was of the year 2016 whereas the FIR has been lodged in the year 2021. He further states that the sons of the Applicant had agreed to repay the money and that they had put the Complainant in possession of MHADA rooms. He states that the Applicant is ready to transfer the possession of the said rooms in favour of the Complainant. He claims that there is no prima facie material to link the Applicant with the crime and as such the Applicant is entitled for bail.

4. Mrs. Takalkar, learned APP states that in the preliminary inquiry conducted prior to the registration of the offence, the Applicant had admitted having received Rs.42,00,000/- from the Complainant. She further states that the room which the Applicant wants to transfer in the name of the Complainant is a transit camp which belongs to MHADA. She states that the Applicant has no right, title or interest in respect of the said rooms and as such he is not competent to transfer the said rooms in favour of the Complainant.

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

6. The FIR prima facie indicates that the Applicant had taken money from the Complainant initially on the ground that the same was required for medical treatment of his wife and later on an assurance to provide two rooms in MHADA project. The Applicant has also taken money from Nandkishore Shetty, Krishna Gowda, Shilabai Sugaji on similar assurance. This is evident from the statements of the said witnesses.

7. The records indicate that the Applicant has entered into Leave and Licence Agreement with the Complainant in respect of Flat Nos.304 and 308, Building No.11, 3rd floor of Building Lokmanya Tilak Rahivasi Sangh, which is a transit camp. It is pertinent to note that Order dated

1.3.2022 records the statement of Mr. Sarogi, learned Counsel for the Applicant, that on failure to repay the amount, the Applicant was ready to permanently convey the said two rooms in favour of the Complainant. This Court had therefore directed the Investigating Officer to ascertain the factual position as regards the said two rooms. Order dated 8.3.2022 records that the Complainant who was present before the Court had stated that he is not residing in the said room, but he had retained possession of the rooms. This Court had once again directed the Investigating Officer to visit the site and ascertain the factual possession. On 17.3.2022 Shri Sarogi, learned Counsel for the Applicant once again made a statement that the Complainant is ready to put the Applicant in possession of the said two rooms, details of which are recorded in the order dated 1.3.2022. Though the Applicant claims to be the owner of the said rooms, the Applicant has not placed on record any material to substantiate the said claim.

8. The Investigating Officer, who is present before the Court today states that neither the Complainant nor any other person is residing in the said rooms. The Investigating Officer further states that the said rooms belong to MHADA, and that on verification it is found that MHADA has not transferred any right title or interest in favour of the Applicant. Thus, the offer of the Applicant of transferring the rooms in favour of the Complainant is itself a dishonest proposal.

9. The material on record prima facie indicates that the Complainant has received the money from the Complainant on an assurance that he would allot MHADA rooms. The Complainant has no right, title or interest in the two rooms in transit camp, in respect of which he has entered into an agreement with the Complainant and which he proposes to transfer in favour of the Complainant . The intention is dishonest and to deceive the Complainant.

10. The nature of the accusations as well as the conduct of the Applicant would not justify grant of pre-arrest bail. Under the circumstances, the Application is rejected.

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(ANUJA PRABHUDESSAI, J.)