

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

**INTERIM APPLICATION NO. 258 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 278 OF 2020**

1) Thakarsi Premji Shah
2) Nitin Y. Manjrekar
3) Chetan Bharat Nigade
v/s.
Lalit Rupchand Parekh and ors.

.... Applicants
.... Respondents

Mr. Aditya Andhorikar for the Applicants.
Mr. Ganesh Gole i/b. Ateet Shirodkar for Respondent Nos.1 and 2.
Ms. S.S. Kaushik, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 27th APRIL, 2022.

P. C. :-

. The Applicants who are the original complainants/victims in C.R.No.44/2019, have filed this Application for withdrawal of the amount deposited by the Respondent Nos.1 and 2 in Anticipatory Bail Application No.278/2020.

2. Heard Mr. Aditya, learned counsel for the Applicants, Mr. Gole, learned counsel for Respondent Nos.1 and 2 and Ms. S.S. Kaushik, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective

parties.

3. The records indicate that pursuant to the First Information Report (FIR) lodged by the Applicant No.1, C.R.No.44/2019 was registered with Rahodi Police Station for offences punishable under sections 406, 420, 506 r/w. 34 of the Indian Penal Code.

4. It is the case of the Applicant No.1/complainant that the Respondents had induced him and others to pay sale consideration of Rs.50,13,400/- towards sale consideration of the flats which were proposed to be constructed by the Respondent Nos.1 and 2. The Respondents did not complete the project and hence, the Applicants filed the first information report for cheating. Apprehending their arrest in the said crime, Respondent Nos.1 and 2 filed an Application being ABA No.278/2020 for pre-arrest bail. The said Application was allowed by this Court by order dated 03/03/2021. A perusal of the said order reveals that the Respondent Nos.1 and 2 had accepted the fact that the Applicants herein had deposited to amount of Rs.50,13,400/- and had stated that they were willing to part with the principal amount with the Applicants and/or to deposit the amount before the court. The Applicants had declined to accept the money and hence, the

money was deposited before this Court. The Applicants have now filed this Application for withdrawal of the amount of Rs.50,13,400/- which was deposited by the Respondent Nos.1 and 2 pursuant to the order dated 03/03/2021.

5. Mr. Gole, learned counsel for Respondent Nos.1 and 2 submits that the Applicants have suppressed the fact that they have already approached the consumer forum in respect of the same dispute. He further submits that the Applicants are not ready to settle the matter and as such they are not entitled to withdraw the money.

6. The records indicate that the Applicants have already approached to Consumer Court. The Applicants are not ready to settle the dispute with the complainant. In such circumstances, the amount deposited by the Respondent Nos.1 and 2 to show their bonafides, cannot be allowed to be withdrawn more so, when the other proceedings including the criminal trial is pending adjudication. Hence, the Application is dismissed.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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