

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

ANTICIPATORY BAIL APPLICATION NO. 74 OF 2022

Roopa Pankaj Sondagar Applicant
v/s.
The State of Maharashtra and ors. Respondents

Ms. Ankita Bamboli for the Applicant.
Ms. A.A. Takalkar, APP for the State.
Mr. Vinod Pandey i/b. Mr. S.U. Pandey for R.No.3.
Mr. Abhinay Pawar, API, Malad Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 25th JULY, 2023.

P. C. :-

. On 10/04/2023, learned counsel for the Applicant had stated that the matter could be settled with the assistance of a mediator. In view of the statement made by the learned counsel for the Applicant, with consent, Mr. Gavand, learned APP was requested to assist the parties in arriving at an amicable settlement. Mr. Gavand, learned APP states that the Applicant has not remained present for settlement talks. Learned counsel for the Applicant states that the Applicant does not wish to settle the matter amicably. Hence, the Application is heard on merits.

2. This is an Application under section 438 of Cr.P.C. filed by the aforesaid Applicant apprehending her arrest in C.R.No.907/2021 registered with Malad Police Station, Mumbai for offences punishable under sections 406, 420 r/w. 34 of the Indian Penal Code.

3. Heard learned counsel for the Applicant, learned APP for the State and learned counsel for the Intervenor. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The aforesaid crime was registered pursuant to the FIR lodged by Namrata Dave – Respondent No.2 herein. The facts narrated in the FIR prima facie reveal that the first informant had come across an advertisement on Nobroker.com website about sale of Flat no.B-06, Milan Apartment, Ramchandra Lane, Malad (W), Mumbai. The first informant contacted the owner on the phone number mentioned in the said advertisement. The husband of the Applicant herein informed that the said flat was for sale. Accordingly, a meeting was held and the sale price of the flat was fixed at Rs.43,00,000/-. The husband of the Applicant informed the first informant that the flat was mortgaged to HDFC Bank, Kanjurmarg Branch. It was agreed that the first informant

and her husband should clear the loan amount of Rs.22,11,585/- and pay the balance amount to the Applicant and her husband. The first informant initially transferred an amount of Rs.1,50,000/- into the account of the present Applicant and paid an amount of Rs.3,00,000/- to the husband of the Applicant. The parties, thereafter, entered into an agreement for sale. Under the said agreement, the first informant was to clear the bank loan by 31/12/2019. The records reveal that even before the first informant could clear the dues, the Applicant and her husband entered into an agreement dated 24/12/2019 with Respondent No.3 – Amish Navin Dedhia for sale of the said flat for sale consideration of Rs.44,66,585/-. The records reveal that pursuant to the said agreement, the Respondent No.3 cleared the bank loan of Rs.22,11,585/- and in addition, paid an amount of Rs.5,00,000/- each to the Applicant and her husband. Having induced the Respondent No.3 in clearing the bank dues, the Applicant and her husband failed to execute the sale deed in favour of Respondent No.3.

5. The records thus prima facie reveal that the Applicant and her husband have not only deceived the first informant but have also deceived Respondent No.3. The facts and circumstances prima facie reveal that this is not a case of mere breach of contract, but it was a

calculated move to advertise sale of the flat and to enter into an agreement only with dishonest and fraudulent intention of inducing the proposed purchaser in clearing the bank dues, without actual intent of selling the flat. Hence, prima facie, the intention to cheat was since inception.

6. Considering the nature of the accusations and the material in support thereof, in my considered view, this is not a fit case to exercise discretion under section 438 of Cr.P.C. Hence, the Application is dismissed.

PREETI
HEERO
JAYANI

(SMT. ANUJA PRABHUDESSAI, J.)

Digitally signed by
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