

VRJ

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

ANTICIPATORY BAIL APPLICATION NO.232 OF 2023

Nitin Rangnath Deo	... Applicant
V/s.	
The State of Maharashtra & Anr.	... Respondents

Mr. Satyajit Jayant Lonkar for the applicant.

Ms. Rutuja Ambekar, APP for the respondent
No.1/State.

Mr. Bhalchandra S. Shinde for the respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JUNE 21, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.209 of 2021 registered with Talegaon MIDC Police Station, District Pune for offences punishable under sections 406, 420 read with section 34 of the Indian Penal Code, the applicant has filed present application seeking relief under section 438 of the Criminal Procedure Code, 1973.

2. According to the prosecution, members of a cooperative society authorized managing committee to appoint a builder/developer. The Secretary of the society allotted work of development to the applicant. Agreed consideration was Rs.11,60,000/-. The construction was to be completed till year

2018. It is alleged that the applicant told the informant that Ganesh Munde has accepted Rs.1,00,000/- towards commission from the consideration amount paid by the members. The construction is incomplete. The obligation to construct the building is on managing committee members and the developer. Due to failure of developer to complete construction, society appointed fresh developer for completion of incomplete construction. Therefore, the informant who is member of the cooperative housing society lodged a complaint against the applicant and the secretary for offences under sections 420 and 406 of the Indian Penal Code, 1860.

3. The applicant's application before the learned Sessions Judge is rejected. Aggrieved thereby, the applicant has filed present anticipatory bail application.

4. On perusal of the case papers and after hearing learned APP for the State and learned advocate for the informant, it prima facie appears that the applicant has constructed three wings of the building. The construction appears to be incomplete to the extent of failure to supply electricity, water and other facilities. It is alleged that plaster and all other things have not been completed by the applicant. At this stage, it is not in dispute that three wings of construction of the building has been done by the applicant; however, the said construction is not as per the Tripartite Agreement entered into between the parties dated 7th September 2016. The informant may have independent remedies to pursue their rights created under the agreement dated 7th September 2016. However, completion of 70% construction of the building as

alleged, at this stage, does not indicate that the intention of the applicant at the inception of transaction was dishonest.

5. In so far as the offence under section 406 of the Indian Penal Code is concerned, it is for the investigating agency to complete the investigation from that angle and to ascertain allegation regarding payment of Rs.1,00,000/- to the secretary. The co-accused who allegedly accepted the amount has been released on bail. Therefore, custodial interrogation of the applicant is not necessary. Hence, following order:

- a) In the event of arrest of the applicant in connection with C.R. No.209 of 2021 registered with Talegaon MIDC Police Station, District Pune for offences punishable under sections 406, 420 read with section 34 of the Indian Penal Code, he shall be released on bail on furnishing PR Bond in the sum of Rs.50,000/- along with one or two sureties in the like amount;
- b) The applicant shall remain present before the investigating officer on 23rd, 26th and 28th June 2023 between 11:00 a.m. to 02:00 p.m. and, thereafter, as and when called by the investigating officer;
- c) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- d) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence

collected or yet to be collected by the police;

e) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;

6. The anticipatory bail application stands disposed of in above terms.

(AMIT BORKAR, J.)