



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.979 OF 2023**

Rajesh Vallabhabhai Shingala ... Applicant
versus
The State of Maharashtra and Ors. ... Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO.879 OF 2023**

Prafulkumar Haribhau Senjaliya ... Applicant
versus
The State of Maharashtra and Anr. ... Respondents

Mr. Niranjan Mundargi i/by Mr. Raviraj Paramane, Mr. Karul Mehta, for Applicant in ABA 879 of 2023.

Mr. Tushar V. Dahibawkar, for Applicant in ABA 979 of 2023.

Smt. A.A.Takalkar, APP for State.

Mr. Aziz Khan with Mr. H.P.Pandey for Intervener.

Mr. Chakane, PSI Dahisar Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 6 NOVEMBER 2023

P.C.

1. Heard the learned Counsel for the parties.
2. These applications are preferred for pre-arrest bail in connection with C.R.No.1805 of 2022 registered with Dahisar Police Station for the offences punishable under Sections 406, 420 read with 34 of the Indian Penal Code.
3. The first informant and his siblings had sold an ancestral property bearing Survey No.153, Hissa No.1, CTS No.2593 Part, admeasuring 1672 sq. mtrs. to the applicants, who are the partners of Rajhans Reality, under a registered instrument

dated 17 August 2011. The first informant and her sister received a consideration of Rs.2.62 Lakhs for their share in the suit property.

4. Thereafter, the first informant alleged, the applicant induced them to invest the said amount in the project which was to be developed on the same land, by making a representation that the first informant and her sister would be given 25% share in the said project. The applicants had allegedly made representation to execute an agreement to that effect. The first informant and her sister were induced to deliver blank cheques. Subsequently, the applicants, first informant alleges, encashed cheques aggregating to a sum of Rs.2,62,00,000/- and transferred the amount to the account of Jigar Constructions, the alleged sister concern of Rajhans Reality. To make the first informant and her sister repose confidence in the applicants, they allegedly paid a sum of Rs.95 lakhs during the period of 2012 to 2017.

5. However, the applicants did not make the first informant and her sister partners in Rajhans Reality as promised, did not pay 25% share in the development carried out at the suit property and, instead, claimed that they had retired from Rajhans Reality and had no concern with the said firm. Having realized the fraud, the first informant lodged the report.

6. Mr. Mundargi, learned Counsel for the Applicant in ABA No.879 of 2023 submitted that the first informant and her sister had invested amount in the project. The applicant had returned the amount, over a period of time. It was never

agreed between the parties that the first informant and her sister would be made partners in the said firm. Attention of the Court was invited to a notice issued by the first informant in which there is no reference to the alleged agreement to induct them as partners in the said firm. It was further submitted that the first informant instituted a suit for specific performance of the agreement executed between the parties. Moreover, the applicant had in terms of the order dated 24 March 2023 deposited an amount of Rs.1.67 Crores in this Court. At this stage, therefore, the custodial interrogation of the applicant is not warranted.

7. Learned Counsel for the Applicant in ABA No.979 of 2023 submitted that the applicant had no concern with Jigar Construction. The first informant and her sister had invested the amount in the project to save the capital gain tax.

8. Learned APP submitted that the applicants had induced the first informant to part with a huge amount of Rs.2.62 Crores and returned only an amount of Rs.95 lakhs.

9. The learned Counsel for the first informant submitted that the applicants had misused the custody of the blank signed cheques and credited the amount to Jigar Constructions, with whom the first informant and her sister had no privity of contract. Therefore, the custodial interrogation of the applicants is warranted.

10. Prima facie, there is an inordinate delay especially in the context of the

credit of the amount to the account of Jigar Constructions in the year 2012 itself. It is the stated case of the first informant that the applicants had repaid a sum of Rs.95 Lakhs during the period 2012 to 2017. In this view of the matter, the question as to whether the intention of the applicants was dishonest since the inception of the transaction would be a matter for adjudication.

11. Prima facie, the dispute appears to be a civil nature. The first informant and her sister have already instituted a suit. In the said Suit, the aspect of specific performance of the agreement, including the aspect of grant of compensation for using the amount of the first informant and her sister over a period of time, can be legitimately delved into. As the applicants have deposited an amount of Rs.1.67 Crores, the interest of the first informant and her sister seems to have been otherwise secured.

12. In this view of the matter, further custodial interrogation of the applicants does not seem to be warranted. I am, therefore, inclined to exercise the discretion in favour of the applicants.

13. Hence, the following order :

ORDER

(i) In the event of the arrest of the Applicants – Rajesh Vallabhabhai Shingala and Prafulkumar Haribhai Senjaliya in connection with C.R.No.1805 of 2022 registered with Dahisar Police Station, they be released on bail on furnishing a PR

bond in the sum of Rs.30,000/- each with one or two sureties in the like amount.

(ii) The Applicants shall co-operate with the investigation and report to Dahisar Police Station on 20th and 21st November 2023 in between 10.00 a.m. to 1.00 p.m., and, thereafter, as and when directed.

(iii) The Applicants shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses and the persons acquainted with the facts of the case.

(iv) The Applicants shall regularly attend the proceedings before the jurisdictional Court.

(v) The amount of Rs.1.67 Crores deposited by the Applicant in ABA No.879 of 2023 be transferred to the account of the Learned Metropolitan Magistrate, exercising over the Dahisar Police Station. Learned Metropolitan Magistrate shall invest the said amount in an interest bearing account. The said amount shall abide the final order of the Court.

(vi) The Applications stand disposed.

(vii) It is clarified that these prima facie observations are confined to determine the entitlement to pre-arrest bail only.

(N.J.JAMADAR, J.)